

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

MAT 919 of 2023
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IA NO. CAN/1/2023

Sri Tapas Kumar Maity & Ors.
Vs
The State of West Bengal & Ors.

Before: The Hon'ble Justice Arijit Banerjee
&
The Hon'ble Justice Prasenjit Biswas

For the Appellants : Ms. Usha Maity, Ld. Sr. Adv.,
 Ms. Anita Khatri, Adv.
 Mr. Sakya Maity, Adv.

For the State : Mr. Amitesh Banerjee, Adv.
 Mr. Suddhadev Adak, Adv.

For the Haldia Municipi- : Mr. S. M. Hassan, Adv.,
pality Ms. Anupama Yasmin, Adv.

For the Respondent nos. 9 : Mr. Asoke Kumar Jena, Adv.
& 10

For Judgment on : 10.05.2024

Arijit Banerjee, J. :-

1. A Judgment and order dated November 23, 2022, whereby the writ application of one Panchanan Maity & Anr., being WPA 17176 of 2000, was dismissed by a learned Judge of this Court, is the subject matter of

challenge in this appeal. The original appellants were the writ petitioners i.e. Panchanan Maity and Kanan Kumar Maity. Both of them having passed away during the pendency of the appeal, their respective legal heirs have come on record. They are the present appellants.

2. Land belonging to the appellants (which term would also include the predecessors-in-interests of the appellants) was acquired under the provisions of the Land Acquisition Act, 1894. The acquisition proceedings were initiated in the form of LA Case No. 33 of 1968-69. It is not in dispute that notification under Section 4 of the 1894 Act was issued in the year 1968. Within the stipulated time period, declaration was made under section 6 of the said Act. Award was declared by the Collector. Notice under Section 12(2) of the 1894 Act was served on the appellants. The appellants received compensation money in 1974 and 1977.

3. The case argued by the appellant before the learned Single Judge was that possession of the land was never taken by the Government. The appellants are still in possession. The land was never utilized for the purpose for which it was acquired. The compensation that was paid to the appellants was a pittance compared to what they are entitled to. They prayed for a direction on the State Government to return the land to them upon the appellants returning the compensation amount received by them against acquisition of the land.

4. Before the learned Single Judge, learned Advocate for the writ petitioners relied on the decision of the Hon'ble Supreme Court in the case of ***Yusufbhai Noormohmed Nendoliya v. State of Gujrat & Anr. reported at AIR 1991 SC 213***, in support of her submission that if the land acquired by the Government is not utilized, the same has to be returned to the original owners. Learned Advocate also relied on a decision of the Hon'ble Supreme Court in the case of ***Satyam Co-operative Housing Society Ltd. v. Calcutta Improvement Trust & Ors. reported at AIR 1989 SC 263***, in support of her contention that if there is inordinate delay in concluding the acquisition proceedings, the entire proceedings shall lapse.

5. The learned Judge found from an order dated June 12, 2000, passed by the Special Land Acquisition Officer, Haldia Project, Basudevapur that the writ petitioners accepted the compensation money paid to them, without protest or without making any reference under Section 18 of the 1894 Act for enhancement of the compensation amount. The said order further records that possession of the land has been taken over by the State Government.

6. The learned Judge also found on record a certificate of possession issued in connection with the State Government handing over the concerned land to the Haldia Dock Complex being the requiring body. Such certificate obviously militates against the contention of the writ petitioners that possession of the concerned land is still with them.

7. The learned Judge concluded that upon declaration of award, possession was taken by the State Government under Section 16 of the 1894 Act, whereupon, the land vested in the State Government. There is no provision in law contemplating return of such vested land to the original land owner even if the land is not utilized for the purpose for which it was acquired or at all. The learned Judge distinguished the decisions relied upon by learned Advocate for the writ petitioners and dismissed the writ petition. Hence this appeal.

8. Appearing for the appellants, Ms. Maity, learned Advocate submitted that because of long pendency of the acquisition proceedings, the same deserve to be quashed. In this connection learned Advocate relied on the decision of a Division Bench of this Court in the case of ***Ratan Chand Burman & Anr. v. The Chairman, Calcutta Improvement Trust and Ors., reported at AIR 1991 Cal 282***. In that case, Calcutta Improvement Trust (in short 'CIT') issued notices under Section 45 of the Calcutta Improvement Act, 1911 (in short 'the 1911 Act') proposing to acquire land specified in such notices for the purpose of carrying out a Street Scheme (Bentinck Street, lower Chitpur Road), in the city of Calcutta. Section 69 of the 1911 Act, empowers CIT to acquire land under the provisions of the Land Acquisition Act 1894 for carrying out any of the purposes of the 1911 Act. The acquisition notices were issued on April 29, 1962. The owners of the premises applied for exempting the premises from acquisition under Section

78 of the 1911 Act and also requested that such representation may be treated as their formal objection to the acquisition notices. There was no response from the side of CIT to the said representation. CIT also did not take further steps for completing the acquisition proceedings. From time to time, at repeated intervals, the owners of the affected premises wrote letters to CIT either to release the concerned premises from acquisition or complete the process expeditiously. After a long period of about 16 years, CIT, on June 20, 1978, wrote to the owners that the scheme was still valid and it was expected that execution of the scheme would be taken in hand within the next 5 years. In August 1978, the owners moved a writ petition before a learned Judge of this Court challenging the validity of the acquisition proceedings initiated by the aforesaid notices on various grounds, namely, delay, colourable exercise of power, *mala fide*, etc. The learned Single Judge directed that all acquisition proceedings in respect of the concerned Street Scheme must be completed, at least so far as the petitioners were concerned, within a period of one year. If the respondents failed to do so, the Street Scheme, in so far as it related to the premises of the petitioners, shall stand quashed. The owners carried the order in appeal. In the aforesaid factual background, a Division Bench of this Court quashed the acquisition proceedings in so far as the premises of the appellants/writ petitioners therein were concerned. The relevant observations of the Division Bench are as follows:-

“25. The findings of the learned Judge in relation to the conduct of CIT have been extracted above. These findings are highly critical of the conduct of CIT in relation to the implementation of the acquisition proceedings. The learned Judge has found such conduct to be "scandalous", the delay was neither fair nor proper, and such unnecessary delay could not be condoned. In view of such findings the submission that the learned Judge should have quashed the proceedings is not without merit. That unjustified and unexplained delay in continuing and completing acquisition proceedings may in some cases lead to the conclusion of lack of bona fides on the part of the acquiring authorities has been recognised by the Supreme Court in *Depak Pahwa v. Lt Governor of Delhi*, reported at AIR 1984 SC 1721. The Full Bench decision of the Punjab and Haryana High Court in *Radheshyam Gupta* (AIR 1982 Punj & Har 519)(supra) also supports the contention that unexplained and inordinate delay is a relevant, if not a conclusive, factor in determining the colourable exercise of power in the context of land acquisition proceedings. It is true that generally, acquisition proceedings are initiated for a public purpose and necessarily in the public interest. We are also conscious of the fact that the Governmental machinery lacks speed because of various justified and unjustified constraints. But the individual interest of the

citizen cannot be altogether ignored. If the Government freezes the property of a citizen for 26 years and even then it is uncertain how it proposes to achieve the public purpose, any further continuance of such acquisition proceedings must be held to be unfair and arbitrary. We recognise the principle that weightage should be given to public interest. But we should not give it such weight as would make it oppressive vis a vis the individual right of citizen to freely deal with his property. We would, therefore quash the acquisition proceedings on the ground of 'scandalous' delay.

26. That apart, it may be noted that the Note which is Appendix D to the proceedings of the 2633rd meeting of CIT dated 25th November 1986 itself says that the proceedings in relation to, inter alia, Street Scheme No. LXXXIX have lapsed according to the provisions of amended Land Acquisition Act. On the admitted facts it must be held to be so.”

9. The aforesaid decision was rendered in a completely different set of facts. In that case, the authorities were neither completing the acquisition proceedings, nor releasing the concerned land in favour of the owners. The property of the writ petitioners/appellants in that case was blocked for more than 16 years. Having no option, the owners had to approach the writ Court. The Division Bench quashed the acquisition proceedings on the ground of scandalous delay in completion thereof. Further, the Division Bench found

from the minutes of a meeting of CIT which was on record, that CIT itself admitted that in view of the amended provisions of the 1894 Act, the land acquisition proceedings had lapsed.

The facts of the present case are totally different. The acquisition proceeding has been carried to its logical conclusion. Award was declared by the Collector. The land owners received compensation without any protest or reservation. The State Government took possession of the land which vested in the State. There can be no question of quashing the acquisition proceedings now.

10. Ms. Maity then referred to the decision of a Division Bench of this Court in the case of ***Amarendra Nath Nath & ors. v. State of West Bengal and Ors. reported at 67 CWN 647***, in support of her submission that even if a land loser accepts compensation money, the same would not disentitle him from claiming other reliefs if he is entitled to do so in law. With great respect to learned Advocate, the said decision does not lay down any proposition of law to the effect that even after receiving compensation money for acquisition of his land, a person can challenge the acquisition proceedings and claim back possession of his land.

11. Learned Advocate then relied on the decision of the Hon'ble Supreme Court in the case of ***Narmada Bachao Andolan v. State of Madhya Pradesh & Anr., reported at AIR 2011 SC 1989***. Learned Advocate referred to paragraph 124 of the reported judgment which reads as follows:-

“124. In view of the above, law on the issue can be summarized to the effect that no strait-jacket formula can be laid down for taking the possession of the land for the purpose of Sections 16 and 17 of the Act 1894. It would depend upon the facts of an individual case. In case the land is fallow and barren and does not have any structure or crop on it, symbolic possession may meet the requirement of law. However, this would not be the position in case crop is standing on the land or a kachha or pacca structure has been raised on such land. In that case, actual physical possession is required to be taken. There may be a case where the acquiring authority is in possession of the land, as the same has already been requisitioned under any law or the property is in possession of a tenant, in such a case symbolic possession qua the tenure holder would be sufficient.”

This decision, in so far as it pertains to the mode of taking over possession of the land under acquisition, has been over-ruled by the Constitution Bench of the Hon’ble Supreme Court in the case of ***Indore Development Authority, infra.***

12. Learned Advocate then referred to the decision of the Hon’ble Supreme Court in the case of ***Vinayak House Building Cooperative Society Limited v. State of Karnataka & Ors., reported at (2021) 14 SCC 409.***

Learned Advocate drew our attention to paragraphs 25 and 29 reported judgment which read as follows:-

“25. It is clear that an important change was affected in law in 1894 by enactment of this section. Under the previous Act, the Government could not withdraw from the acquisition after an award had been made or a reference directed. This was causing hardship in cases where the land turned out to be more valuable than the acquisition was worth. The difficulty has been removed by fixing the bar at the taking of possession, an act which can be indefinitely postponed to meet the occasion. When possession under Section 16 of the L.A. Act is not taken, the Government can withdraw from acquisition and the person interested would be entitled to compensation for the damage suffered in consequence of the acquisition proceedings and also to such costs of the proceedings as reasonably incurred by him. Section 48, however, will have no application when once the land has vested in the Government under Section 16 of the L.A. Act.

29. However, from the language employed in sub-section (1) of Section 48, it can also be inferred that there is no bar to de-notify the land from acquisition at the request of the landowners. We are of the view that when an application is made for de-notification of the land, the Government has to consider the same with great care and caution. The Government has to consider the application keeping in mind the

subservience of public interest because the lands are being acquired for public purpose. The Government should not exercise this power in an arbitrary and whimsical manner. The decision of withdrawal from acquisition should be bona fide and backed by valid reasons. It is settled that the Government could not withdraw land from acquisition without giving the beneficiary of acquisition an opportunity of being heard. (See: State Government Houseless Harijan Employees' Association v. State of Karnataka and Others reported at (2001) 1 SCC 610”

13. We do not see how the aforesaid judgment advances the case of the appellants. The judgment also clarifies what the scope of Section 48 of Land Acquisition Act, 1894 is. The Hon'ble Supreme Court in no uncertain terms has said that once possession is taken and there is vesting, question of de-acquisition cannot arise under Section 48 of the Act.

14. After the hearing of the matter was concluded, learned Advocate for the appellants filed a compilation of case laws which not only included the 4 decisions relied upon by her as recorded earlier in this judgment but several others. Although we need not have considered such other decisions, for the sake of justice, we discuss such decisions herein below:-

(i) ***ABCI Infrastructure Pvt. Ltd. v. State of West Bengal & Ors., reported at (2017) 1 WBLR (Cal) 90.*** This decision was

referred to in support of the proposition that a plot of land which is the subject matter of acquisition does not vest in the State until the Collector takes actual physical possession of the land.

We do not see the relevance of this decision in the facts of the present case. We have already found sufficient evidence on record that possession of the land was taken by the State and handed over to the beneficiary of the acquisition.

(ii) ***Raj Pal Singh v. Commissioner of Income Tax, Haryana, Rohtak, reported at (2021) 13 SCC 489.*** Learned Counsel relied on paragraphs 32.1 and 32.2 of the reported judgment in support of the contention that publication of preliminary notification under Section 4 of the Land Acquisition Act, 1894, by itself does not vest the concerned property in the Government until possession thereof is taken by the Land Acquisition Collector. Only thereafter, the land vests in the Government free from all encumbrances. A deviation from the process is permissible only under Section 17 of the 1894 Act, in case of urgency.

There can be no dispute with the aforesaid proposition. We have found as a matter of fact that possession of the land in question in the present case was taken over by the Government. Therefore, the aforesaid decision is also of no relevance in the facts of the present case.

(iii) ***The State of Madhya Pradesh and Ors. v. Vishnu Prasad Sharma & Ors., reported at AIR 1966 SC 1593.*** Learned Advocate relied on paragraph 19 of the judgment which reads as follows:-

“**19.** Then reliance is placed on S. 48 which provides for withdrawal from acquisition. The argument is that S. 48 is the only provision in the Act which deals with withdrawal from acquisition and that is the only way in which Government can withdraw from the acquisition and unless action is taken under S. 48(1) the notification under S. 4(1) would remain (presumably forever). It is urged that the only way in which the notification under S. 4(1) can come to an end is by withdrawal under S. 48(1). We are not impressed by this argument. In the first place, under S. 21 of the General Clauses Act, (No. 10 of 1897), the power to issue a notification includes the power to rescind it. Therefore, it is always open to Government to rescind a notification under S. 4 or under S. 6, and withdrawal under S. 48(1) is not the only way in which a notification under S. 4 or S. 6 can be brought to an end. Section 48(1) confers a special power on Government of withdrawal from acquisition without canceling the notifications under ss. 4 and 6, provided it has not taken

possession of the land covered by the notification under S. 6. In such circumstances the Government has to give compensation under S. 48(2). This compensation is for the damage suffered by the owner in consequence of the notice under S. 9 or of any proceedings thereafter and includes costs reasonably incurred by him in the prosecution of the proceedings under the Act relating to the said land. The notice mentioned in sub-s. (2) obviously refers to the notice under S. 9(1) to persons interested. It seems that S. 48 refers to the stage after the Collector has been asked to make order for acquisition under S. 7 and has issued notice under S. 9(1). It does not refer to the stage prior to the issue of the declaration under s. 6. Section 5 says that the officer taking action under s. 4(2) shall pay or tender payment for all necessary damage done by his acting under s. 4(2). Therefore, the damage if any, caused after the notification under S. 4(1) is provided in section 5. Section 48(2) provides for compensation after notice has been issued under S. 9(1) and the Collector has taken proceedings for acquisition of the land by virtue of the direction under s. 7. Section 48(1) thus gives power to Government to withdraw from the acquisition without canceling the notifications under ss. 4 and 6 after notice

under s. 9(1) has been issued and before possession is taken. This power can be exercised even after the Collector has made the award under S. 11 but before he takes possession under s. 15. Section 48(2) provides for compensation in such a case. The argument that S. 48(1) is the only method in which the Government can withdraw from the acquisition has, therefore, no force because the Government can always cancel the notifications under Ss. 4 and 6 by virtue of its power under S. 21 of the General Clauses Act and this power can be exercised before the Government directs the Collector to take action under S. 7. Section 48(1) is a special provision for those cases where proceedings for acquisition have gone beyond the stage of the issue of notice under S. 9(1) and it provides for payment of compensation under S. 48(2) read with S. 48(3). We cannot therefore, accept the argument that without an order under S.48(1) the notification under S. 4 must remain outstanding. It can be cancelled at any time by Government under S. 21 of the General Clauses Act and what S. 48(1) shows is that once Government has taken possession it cannot withdraw from the acquisition. Before that it may cancel the notifications under ss. 4 and 6 or it may withdraw from the acquisition under s. 48(1). If no notice has been issued under s. 9(1) all

that the Government has to do is to pay for the damage caused as provided in s. 5; if on the other hand a notice has been issued under s. 9(1), damage has also to be paid in accordance with the provisions of s. 48(2) and (3). Section 48(1), therefore, is of no assistance to the appellant for showing that successive declarations under S. 6 can be made with respect to land in the locality specified in the notification under s. 4(1).”

We do not agree with the interpretation of the aforesaid judgment as made by learned Advocate for the appellants. As we read that judgment, it lays down that a notification under Section 4(1) of the Land Acquisition Act, 1894, can be withdrawn/cancelled by the Government in exercise of power under Section 21 of the General Clauses Act, 1897. The Hon’ble Apex Court held that under Section 21 of the 1897 Act, the power to issue a notification includes the power to rescind it. Therefore, it is always open to the Government to rescind a notification under Section 4 or Section 6 of the 1894 Act and withdrawal under Section 48(1) is not only way in which a notification under Section 4 or Section 6 can be brought to an end. However, the Hon’ble Court clarified that such power under Section 21 could be exercised prior to vesting of the land in the Government. As we read it, the judgment does not say that even after the land has vested in the Government after possession thereof has been taken over by the Collector, still the

notification under Section 4(1) or the declaration under Section 6 can be withdrawn or cancelled in exercise of power under Section 21 of the General Clauses Act, 1897. Hence, this decision also does not advance the case of the appellants to any extent.

(iv) ***Satyam Co-operative Housing Society Ltd. v. Calcutta Improvement Trust & Ors., reported at AIR 1989 Cal 263.*** In this case it was held by a learned Judge of this Court that the State Government as also the Calcutta Improvement Trust were entirely responsible for the delay in the conclusion of the acquisition proceedings and further the acquisition proceedings were sought to be concluded with the sole purpose that the concerned authority wanted to acquire the land on the basis of the price as prevailing in 1964 when the notification under Section 43(1) of the Calcutta Improvement Act was published. It was observed that there could not be any more glaring instance of pecking down the price as in that case. Although there is no time limit for the conclusion of the acquisition proceedings in the Act, yet, that does not mean that the State Government can conclude the proceedings at any time, may be after 10 or 20 years at the whim and caprice of the State Government and without any reasonable excuse for the delay. In the facts of that case the entire

acquisition proceedings were quashed with the liberty to initiate fresh proceedings for acquisition.

The facts of that case were entirely different from the facts of the present case. There has been no delay in the present case in concluding the acquisition proceedings. Compensation was duly accepted, without protest, by the appellants or their predecessors- in -interest. Hence, the aforesaid decision has no manner of application to the facts of the instance case.

(v) ***Sheela Jawarlal Nagori & Anr. v. Kantilal Nathmal Baldota & Ors., reported at (2014) 11 SCC 376.*** This decision was relied upon for the proposition that the land sought to be acquired vests in the Government only upon the Collector taking possession thereof under Section 16 of the Land Acquisition Act, 1894.

There is absolutely no dispute with the aforesaid proposition of law. Excepting in a case covered by Section 17 of the 1894 Act, the land in question vests in the Government only when the Collector takes possession thereof after declaration of Award.

(vi) ***Lucknow Development Authority & Anr. v. Gopal Das (deceased) Through LRS & Ors., reported at (2019) 5 WBLR (SC) 369.*** In that case the land of the respondent/land owners was released from acquisition and an order for payment of development charges by the land owner was made in terms of Section 17 of the

Uttar Pradesh Urban Planning Development Act, 1973. The point for consideration before the Hon'ble Supreme Court was whether or not the High Court was justified in setting aside the order for payment of development charges. The Hon'ble Supreme Court, in the facts of that case, reversed the High Court's order and held that the respondents could not avoid payment of development charges while seeking restoration of land in terms of Sections 17 of the 1973 Act.

We fail to see how this decision is relevant to the facts of the instant case.

(vii) ***Indore Development Authority v. Manoharlal & Ors. reported at (2020) 8 SCC 129.*** This decision was relied upon in support of the proposition that drawing up of Panchnama is the only mode of taking possession in land acquisition cases and only thereupon the land vests in the State.

It is true that no panchnama or copy thereof could be produced by the State in the present case. However, we must bear in mind that this acquisition proceeding was initiated in 1967/68, a long time ago. It is possible that all the records of the case are no more traceable. However, as we have discussed above, there is sufficient material on record to show that possession of the land was taken over by the State. The land was handed over to the beneficiary which has been utilized for industrial purpose. In any event, the appellants/their predecessors having accepted compensation

without reservation, these issues cannot be permitted to be agitated by them at this distant point of time.

15. From the material on record, we find that notice under Section 4(1) of the 1894 Act was published and served upon the concerned persons in November 1967. Notice under Section 5A of the Act (hearing of objection) was issued in May 1968. Report of the hearing under Section 5A of the Act was approved on June 10, 1968. Declaration under Section 6 of the Act was published on December 26, 1968. Order under Section 7 of the Act was received on May 6, 1974. Award was declared for part of the acquired land in 1974 and for the remaining portion of the land in 1977. The appellants admit that they received compensation in 1974 and 1977. We also find that possession of the land was duly taken by the State Government or on its behalf and therefore the land vested in the Government under Section 16 of the 1894 Act.

16. In those facts and circumstances of the case, the case of the appellants that the Government should be directed to return the concerned land to them upon their refunding the compensation amount, cannot be accepted at all. There is no merit in the claim of the appellants. Once the land has vested in the Government, the law does not permit return of the same to the land owner. Even if the public purpose for which the land was acquired, has failed, still the land owner cannot claim back possession or

ownership of the land. The acquired land may be used by the State for some other public purpose. This is the settled law of the land.

17. We find no infirmity in the judgment and order under appeal. No interference with the same is called for.

18. In view of the aforesaid, this appeal fails and is dismissed along with the connected application. However, in the facts and circumstances of the case, there will be no orders as to costs.

19. Urgent Photostat certified copies of this Judgment, if applied for, be supplied to the parties on compliance of all necessary formalities.

(Arijit Banerjee, J.)

I agree

(Prasenjit Biswas, J.)