

03.12.2024
Item No.11+12
RP/AN
Ct. No.07

WPA 12332 of 2012
Sankar Kumar Kundu & Ors.
Vs.
State of West Bengal & Ors.

With

WPA 12334 of 2012
Madanbari Tea Estate (P) Ltd. & Anr.
Vs.
State of West Bengal & Ors.
+
IA No.CAN 2 of 2024

Mr. Debasish Kundu
Mr. Saumyen Datta
Mr. Rajendra Nath Barik
.... For the Petitioners
Mr. Ansar Mandal
Mr. Gausul Alam
.... For State

1. The writ petitions are taken up for hearing analogously as common question on facts and law are involved in these writ petitions.
2. The petitioners claim to be the owners of land situated at Mouza-Sukhani and Sannyasikata under Police Station Rajganj in the district of Jalpaiguri. The land of the petitioners along several other plots of land were requisitioned by the Collector by an order passed under Section 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948 (for short "1948 Act"). The notice under Section 4(1a) of the 1948 Act was published by the Collector in July 19, 1995.

- 3.** Alleging that the Collector has not passed the award during the lifetime of 1948 Act, the petitioners approached this Court by filing two separate writ petitions. The said writ petition came up for hearing on December 12, 2007 and the coordinate Bench disposed of the writ petitions by directing the Collector to issue requisite notice under Section 9(3A) or (3B), as the case may be, of the Land Acquisition Act 1894 (for short “1894 Act”) as was amended by the State of West Bengal in 1997. The coordinate Bench further directed that such notice shall be given to all persons interested including the petitioners and after following the provisions of law and giving the petitioners an opportunity of participating in the proceeding and presenting their case and within six months from the date the notice issued the Collector shall make and declare the award and pay compensation to the persons in whose favour the award is made. It was further directed that the requisite notice under Section 12(2) and Section 31 shall be issued to the persons concerned immediately.
- 4.** Thereafter, the petitioners filed these writ petitions praying for issuance of writ of mandamus commanding the respondents to set aside the purported award passed by the respondents on March 31, 1997 and to direct the respondent to issue

notice under Section 4(1) of the 1894 Act and to pass an award accordingly. The petitioners prayed for an alternative relief in these writ petitions praying for an order permitting the petitioners to file a reference petition under Section 18 of the 1894 Act. The petitioners have also prayed for an order for conducting joint measurement of the land of the petitioner no.1 acquired by the respondent and to declare an award for the excess land.

5. Mr. Kundu, learned advocate appearing for the petitioners submits that after the order dated December 12, 2007 was passed in the aforesaid writ petitions, no notice under Section 9(3A) or (3B) was issued. He further submits that no award in terms of Section 11 of the 1894 Act was made. He submits that no notice under Section 12(2) of the 1894 Act was served upon the petitioners. By referring to Section 18 of the 1894 Act, Mr. Kundu submits that the Collector was under obligation to serve a notice under Section 12(2) as the limitation for filing an application under Section 18 of the 1894 Act starts to run from receipt of such notice. He submits that since no notice under Section 12(2) was served upon the petitioners and the petitioners promptly approached this Court by filing a writ petition, this Court should permit the petitioners to approach the Court under Section 18 of the 1894 Act. Mr. Kundu

places reliance upon a decision of the Hon'ble Supreme Court in the case of **Parsottambhai Maganbhai Patel & Ors. vs. State of Gujarat** reported in **2005(7) SCC 431** in support of his contention that if no notice under Section 12(2) of the 1894 Act has been served, the petitioners may be permitted to approach the reference Court.

6. Mr. Mondal, learned advocate appearing for the State submits that the award was passed on March 31, 1997. He further submits that the petitioners have accepted the compensation amount long back and, therefore, the petitioners should not be permitted to approach the reference Court under Section 18 of the 1894 Act at this point of time. He further submits that since the award was passed during the lifetime of Act II of 1948, there was no necessity to issue notice under Section 9(3A) or (3B) of the Land Acquisition (West Bengal Amendment) Act 1997. He places reliance upon a decision of the Bombay High Court (Nagpur Bench) in the case of *Baghchand Goverdhan Naik vs. State of Maharashtra & Ors.* reported in 2005 LAC 361 (Bombay) in support of his contention that with the passing of the award, proceeding initiated for acquisition of land under the provisions of the Land Acquisition Act stands concluded.

7. Mr. Ansar Mondal is requested to represent the State in WPA 12332 of 2012 as none is representing the State in that writ petition. Let his appointment be regularised by the Office of the Legal Remembrancer.
8. Heard the learned advocates for the parties and perused the materials placed.
9. State has filed an affidavit-in-opposition to this application disclosing the notice issued under Section 4(1a) of the Act of II of 1948 Act which was published in the Calcutta Gazette on July 14, 1995. In the said affidavit, it has been specifically stated that the award was declared on 31.03.1997.
10. From the documents disclosed in the affidavit-in-opposition, it appears that the names of the petitioners appear in the list of awardees. An award under Section 11 of the 1894 Act shall state the area of the land, the compensation to be allowed for the land and the apportionment of the said compensation among all the persons believed to be interested in the land.
11. From the documents disclosed in the affidavit-in-opposition filed by the State, this Court finds that the award was passed on 31.03.1997 i.e., during the lifetime of the 1948 Act.
12. Mr. Kundu could not point out any infirmity in the award excepting that no notice under Section 12(2) of the 1894 Act was served upon the petitioner.

13. The order and direction passed by the Co-ordinate Bench in the earlier round of litigation was based on the submissions of the learned advocate for the petitioner that no award was passed during the lifetime of the 1948 Act. In view of the documents disclosed by the State in the case on hand, this Court holds that the directions passed in the earlier round of litigation is of no assistance to the petitioner.
14. It appears from the documents disclosed in the affidavit that the petitioners received the compensation amount vide several cheques bearing the dates of 26.03.2012.
15. Mr. Kundu, learned counsel appearing for the petitioner submits that such compensation amount was received by the petitioners under protest. He also submits that immediately after coming to know that the award was passed, the petitioner approached the authorities and have received the compensation amount. He submits that immediately thereafter the petitioner approached this Court by filing this writ petition praying for an order permitting the petitioners to approach the reference court under Section 18 of the 1894 Act.
16. The petitioners have disclosed several notices dated November 18/20, 2009 directing the petitioners to appear at the Office of the Collector on 25.11.2009 in

connection with the hearing in terms of the order passed in the aforesaid writ petitions.

17. It further appears from the documents annexed to the writ petition that the Special Land Acquisition Collector vide memo dated 01.01.2010 informed the petitioners that in connection with case no. RA 42/91-92, the lands of the petitioners have been acquired and an award has also been published. It further appears from the said notice that the petitioners were requested to collect the compensation amount. This Court fails to understand as to why the petitioner approached the authorities for receiving the compensation amount only in the month of March, 2012 when they came to know of the award in 2010. After being made aware of the fact that an award was passed, the petitioners ought to have taken prompt steps to take recourse available under the provisions of the 1894 Act, more particularly, Section 18 thereof.
18. Section 18 of 1894 Act states that any person interested who has not accepted the award, may, by written application to the Collector, request that the matter be referred by the Collector for determination of the Court, whether his objection to the measurement of the land, the amount of compensation, the persons to whom it is payable or the apportionment of the compensation among the

persons interested. Sub-section 2 of Section 18 states that the application shall state the grounds on which the objection to the award is taken. Proviso to sub-section 2 states that every such application shall be made within six weeks from the date of the Collector's award if the person making it was present or represented before the Collector at the time when he has made the award and in other cases within six weeks of the receipt of the notice from the Collector under Section 12(2) of the said Act or within six months from the date of Collector's award, whichever period shall first expire.

19. In the case on hand, the petitioner claims that no notice under Section 12(2) was served upon them. Therefore, the first part of the proviso contained in Clause (b) of Section 12(2) of the 1894 Act shall not be attracted. In such a case, the claimant can seek reference under Section 18 within a period of six months from the date of the award. It is well settled that the limitation of six months would start to run from the date of knowledge of the award.
20. This Court finds from the documents disclosed in the writ petition that the petitioner was served with a notice vide memo dated 01.01.2010 requesting them to collect the compensation amount. The petitioner has not disclosed the reasons as to why the petitioner approached the authorities for receiving

the compensation amount only in the month of March, 2012. The reasons for which the petitioner did not approach the reference court under Section 18 of the 1894 Act is best known to the petitioners. Such delay remains unexplained.

21. In **Pursottam Maganvai Patel (supra)** the petitioners therein filed an application under Section 18 of the 1894 Act and on the facts of the case, the Hon'ble Supreme Court held that such application was well within the period of limitation. The said decision being distinguishable on facts cannot come to the aid of the petitioner in the case on hand.
22. There is no quarrel to the proposition of law laid down in **Bhagchand Govardhan Nayek (supra)** that upon making an award the proceedings initiated for acquisition of land under the provisions of Land Acquisition Act stands concluded.
23. Therefore, this Court is not inclined to grant any liberty to the petitioner to approach the reference court under Section 18 of the 1894 Act.
24. So far as the prayer of the petitioner for joint measurement of the land in question is concerned, this Court finds that the petitioner has not stated specifically as to the amount of land which has been utilised in excess of the land which was initially requisitioned and subsequently acquired by invoking the provisions of Act II of 1948 Act. It is well settled

that the court cannot be utilised as a tool for making a roving inquiry. The petitioners are trying to fish out evidence, which is not permissible. For such reason, this Court is not inclined to allow the prayer of joint measurement of the lands in question.

25. Hence, for all the reasons stated hereinabove, the writ petitions along with the connected application stand **dismissed**, however, without any order as to costs.
26. Urgent photostat certified copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(HIRANMAY BHATTACHARYYA, J.)