

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE**

Present:

The Hon'ble Justice Aniruddha Roy

W.P.A. 21156 of 2024

Sital Chandra Mondal @ Sital Mondal & Ors.

Vs.

State of West Bengal & Ors.

For the Petitioner : Mr. Kumar Jyoti Tewari
Mr. Panchanan Hajra

For the State : Mr. Asish Dutta
Mr. Ansar Mondal

Heard on : 19.09.2024

Judgment on : 19.09.2024

Aniruddha Roy, J.:

Facts:

1. The petitioners claim to be owners of a piece of land, as morefully and particularly, described in **paragraph 2** of the writ petition.

2. Pursuant to a notice dated **January 31, 1973** issued under **Sub-Section (1) to Section 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948** (For short 'the said Act, 1948'), the said land was requisioned by the State under Requisition **Case No. I-28 of 1972-73** for the purpose of construction of Mundeswari

Right Embankment in connection with the scheme for lower Damodar, for delivering possession of the land to respondent no.6 being the requiring body to cause the necessary construction.

3. Ultimately the land was never utilized. The land was never acquired. The requisition, resultantly, lapsed as the scheme was abandoned on March 31, 1997. With the expiry of the said 1948 Act. Section 6 of 1948 Act provides for release of the land in favour of the land owners, being the petitioners herein. Section 7 of the 1948 Act along with other provisions thereunder provide for payment of requisition compensation to the land owners.

4. Pursuant to the direction made in the previous writ litigation filed by the predecessors-in-interest of the petitioners the land was ultimately released on **October 29, 2015** and the physical possession was handed over to the land owners, as would be evident from the document being **Annexure 'P-3' at pages 29 and 30** to the writ petition. The petitioners and/or their predecessors-in-interest received possession of the land, being the land owners.

5. The petitioners now in 2024 have filed the instant writ petition with the following reliefs:

“a) A writ in the nature of Mandamus directing upon the respondent authorities mainly the respondent nos. 2, 3 and 6 to remove illegal encroachment made by the respondent Nos. 9 to 18 in tacit support of the state respondents;

b) A writ in the nature of Mandamus directing the respondent Nos. 2, 3 and 6 to comply with the provision of Section 6(2) of the West Bengal Land (Requisition and Acquisition) Act, 1948 by discharging their statutory liabilities by removing the encroachments on the part of the private respondents as claimed by

the petitioners by their application/representation dated 06.05.2024 being annexure 'P/5' to this application;

c) A writ in the nature of prohibition by prohibiting the respondents including private respondents not to disturb/obstruct the petitioners to possess their land in plot no. 791 of Mouza-Bachhanari, J.L. No. 62 measuring 50 decimals;

d) A writ in the nature of Certiorari calling upon the respondents to transmit all records of the instant case so that conscionable justice may be done;

e) Rule NISI in terms of prayers (a), (b), (c) and (d) above; mandatory

f) An order of injunction be passed by directing the concerned respondents to take immediate steps by removing the illegal encroachments created by the Private Respondents and hand over peaceful, vacant and unencumbered possession of the land in question to the petitioners forthwith;

g) Ad-interim order in terms of prayer (f);

h) To pass such other order or orders direction or directions as Your Lordships may deem fit and proper.”

Submissions:

6. Mr. Kumar Jyoti Tewari, learned counsel appearing for the petitioners submits that while delivering possession in favour of the predecessors-in-interest of the petitioners, there was no field enquiry or inspection held and by mere execution of the document for release of physical possession at pages 29 and 30 to the writ petition, the possession was delivered. When possession was delivered to the land owners in 2015, they found several encroachments on the land. Petitioners raised objections but no heed was paid thereto by the State. Finding no other alternative and under compulsion, the owners accepted the possession with such encroachment.

7. Relying upon the provisions laid down under Section 6 of the said 1948 Act, Mr. Tewari, learned counsel for the petitioners submits that when the land was requisitioned from the petitioners' predecessors-in-interest free from encumbrances and without any encroachment, it was the duty and obligation of the State to return the land as it had requisitioned the land free from encumbrances and encroachment.

8. While returning the land the State returned the same with full of encroachments and therefore, the State has acted in breach of its legal obligation and the State is liable to return the said land free from any encroachment and encumbrance.

9. Learned counsel for the petitioners submits that the petitioners through their predecessors-in-interest have a valuable right to their property under Article 300A of the Constitution of India and the State authority is bound to secure such right, when the property was requisitioned and returned at their instances. By returning the property with encroachments the State has infringed the valuable right of the petitioners guaranteed under Article 300A of the Constitution of India.

10. Learned counsel for the petitioners further submits that it is a continuing cause of action or there was no delay or laches on the part of the petitioners while claiming the reliefs as prayed for through the instant writ petition filed in 2024. In support, Mr. Tewari, learned counsel has relied upon a decision of the Hon'ble Supreme Court **In the matter of: *Vidya Devi Vs. State of H. P. reported at (2020) 2 SCC 569.***

11. In addition, learned counsel for the petitioners has referred to several orders passed by the Co-ordinate Bench of this Court, when the Co-ordinate Bench directed the appropriate State authorities to consider the case of the petitioners within a time frame.

12. In the light of the above submissions, Mr. Tewari submits that this writ petition should be allowed.

13. Mr. Asish Dutta, learned State counsel for the State respondents at the threshold submits that this is a grossly belated writ petition. The possession was accepted by the predecessors-in-interest of the petitioners in **October, 2015** and the instant writ petition has been filed in the year **2024**, about nine years after the physical possession of the land was received by the owners.

14. Learned State counsel further submits that the moment the land owners have received and accepted the physical possession from the State after the same was derequisitioned, under the law, no further obligation exists on the part of the State in connection with the said land. The State had seized of all of its liability, the moment the possession of the land was accepted by the land owners.

15. Referring to the delivery of possession document at **pages 29 and 30** to the writ petition, learned State counsel submits that the predecessors-in-interest of the petitioners being the land owners had signed the document and then received the possession of the land after causing necessary inspection of the land. Therefore, at this belated stage it cannot be contended on behalf of the petitioners that a formal handing over of land had taken place and the owners did not inspect the same or they received the land with encroachment and the encroachment had happened during the tenure when the land remained requisitioned by the State.

16. Learned State counsel further submits that the provisions under Section 6 of the said 1948 Act specifically provides that the moment the possession of the land is delivered in favour of the land owners and the same is accepted by the land owners,

the liability of the State comes to an end and subsequently the land owners cannot raise any further claim against the State and make the State liable.

17. He further submits that as there is no evidence to show that any encroachment had taken place during the tenure of the requisition under the State and the land owners accepted the possession of the land, it is now a disputed question of facts whether the encroachment took place during the tenure of the requisition or after the land was returned back to the petitioners nine years back. On these disputed facts writ petition should not be entertained.

Decision:

18. Looking at the cause espoused by the petitioners, this court is of the view that, no fruitful purpose shall be served by keeping this writ petition pending by calling upon affidavits. Accordingly, this court proceeds to dispose of the writ petition finally on the basis of the existing records.

19. The admitted facts are, land was requisitioned by the State during the period about **1972-73** and since the project was abandoned and the land was not acquired and utilized, the land was returned on **October 29, 2015** to the land owners being the predecessors-in-interest of the petitioners. The **requisition compensation** has duly been **paid and accepted** by the land owners **without any objection**. The present petitioners also did not raise any issue with regard thereto. The document for delivering possession at pages 29 and 30 to the writ petition bears the signatures of the land owners. Neither the said document signifies any objection raised by the land owners with regard to any encroachment nor any contemporaneous document is on record to show that the land owners raised objections with regard to encroachment contemporaneously and simultaneously while receiving possession of the land.

20. From a meaningful reading of the various provisions under **Section 6 of the 1948 Act**, it appears to this court that, *“where any land requisitioned under Section 3 is not acquired and is to be released from requisition, the State may, after making such enquiry, if any, as it considers necessary, specify by order in writing the person who appears to it to be entitled to the possession of such land. The delivery of possession of such land to the person specified in the order made under Sub-Section (1) shall be **full discharge of any liability of the State** for any claim for compensation or **other claim** in respect of such land **for any period** after the delivery.”*

21. From the facts of the instant case it is evident on record that, the possession was delivered to the land owners on **October 29, 2015** and the land owners received and accepted the possession by putting their signatures on the relevant document, as narrated above. No objection whatsoever was raised by the land owners with regard to any encroachment.

22. The requisition compensation has been paid. **Section 6 of the 1948 Act**, therefore, has clearly discharged the State for any claim of encroachment as alleged by the petitioners, the moment the land owners being the predecessors-in-interest of the petitioners had received and accepted the possession without any objection or demur.

23. The moment possession was delivered to the land owners and the land owners accepted possession without any objection, no further liability survives on the part of the State and the obligation and duty of the State then and there come to an end.

24. Had the petitioners or their predecessors-in-interest been aggrieved, they could have raised their objection and could have raised their claims against the State demanding removal of encroachment contemporaneously. Never such claim was raised. Neither any demand for removal of encroachment was made by the land owners and the same was raised for the **first time** through the instant writ petition in **2024**. It cannot be construed, therefore, that there is any continuing cause of action for which the petitioners can raise their grievances after almost **nine years** of receiving possession of the land. Delay defeats equity. The law is well settled that even though there is no specific limitation provided for instituting a writ proceeding under Article 226 of the Constitution of India but the same has to be initiated within a reasonable period. Lapse of nine years cannot be considered to be a reasonable period of time. Moreover by operation of law under Section 6 of the Act, the State stands discharged of all its liability way back on October 29, 2015. Therefore, the ratio laid down by the Supreme Court ***In the matter of: Vidya Devi (supra)***, has no application in the facts of this case. In the other matters where the Coordinate Bench has passed several orders, those writ petitions were filed contemporaneously with the receiving of possession. Thus those will not apply in the facts of this case.

25. In so far as the allegations and counter allegations with regard to happening of encroachment on land, as narrated above, that whether the petitioners had accepted the land with encroachments and the encroachments had happened during the tenure of requisition or not or whether it was merely a handing over of possession by exchange of documents or without any inspection or enquiry are the matters which are to be gone into by way of a detailed fact finding enquiry in a properly constituted trial. Such disputed issues cannot be gone into by this constitutional court in exercising its power and authority under Article 226 of the Constitution of India.

26. In view of the foregoing reasons and discussions, this court is of the firm and considered view that this writ petition is not maintainable and accordingly this writ petition being **WPA 21156 of 2024** stands dismissed, without any order as to costs.

27. However, the petitioners, shall be at liberty to institute a properly constituted civil action before the Jurisdictional Civil Court to ventilate their grievances, if any, in accordance with law. In the event, the petitioners intend to file such civil suit, the same has to be filed within two months from date.

28. Urgent photostat certified copy of this order, if applied for, be supplied to the parties on urgent basis after completion of all necessary formalities.

(Aniruddha Roy, J.)