

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

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

**WPA 24015 of 2015
With
I.A. No. CAN 1 of 2023
CAN 2 of 2023
LGW Limited & Another
VS.
State of West Bengal & Others**

For the petitioners	: Mr. Debayan Bera, Ld. Sr. Advocate Mr. Debashis Roy advocates
For the State	: Mr. Lalit Mohan Mahata, AGP Mr. Prasanta Behari Mahata advocates
For WBHIDCO	: Mr. Abhratosh Majumdar, Ld. Sr. Advocate Mr. Chayan Gupta Mr. Aritra Basu Mr. Saaqib Siddiqui Advocates
Reserved on	: 29.07.2024
Judgment on	: 16.08.2024

Hiranmay Bhattacharyya, J.:

1. The writ petitioners have prayed for a declaration that the acquisition proceedings being LA Case No. 4/53 of 2005-06/NTP stood lapsed and for issuance of a mandamus to command the respondents to release the lands and return the land of the petitioners or in the alternative to make payment of compensation for acquisition of the land of the petitioners at the present market rate.
2. The petitioners claim to have purchased various plots of land being Dag Nos. 3329, 3330, 3333, 3334, 3343, 3539, 3541, 3997, 3335, 3338 and 3433 at

Rajarhat within Mouja Gopalpur in the district of 24 Parganas North by virtue of registered deeds of conveyance between February 2001 and February 2003.

3. A Notification under Section 4 of the Land Acquisition Act, 1894 was published in the Kolkata Gazette Extraordinary dated 27.06.2006 for acquisition of 9.590 acres of land of Mouja Gopalpur GL No. 2 under Police Station Rajarhat in the district of 24 Parganas North. Thereafter the Government of West Bengal published a declaration under Section 6 of the Land Acquisition Act, 1894 in respect of the selfsame land and such declaration was published in the Kolkata Gazette Extraordinary dated 15.03.2007.
4. The petitioners were served with a notice dated 14.9.2007 under Section 12(2) of the 1894 Act informing them that they are entitled to receive a sum of Rs. 60,20,015/- as compensation for acquisition of land. Upon receipt of the said notice the petitioners raised an objection against the proposed calculation of compensation on various grounds by letter dated 27.9.2008 requesting the respondent authorities to make a reference before the Land Acquisition Court under Section 18 of the 1894 Act.
5. Since the compensation awarded in favour of the petitioners were not paid, the petitioner filed a writ petition being WP No. 18004(W) of 2009 praying for an order directing the respondent authorities to dispose of the objection of the petitioners. The said writ petition was disposed of by an order dated 3.05.2010 by directing the land acquisition Collector to refer the case of the petitioner company to the appropriate Land Acquisition Court under Section 18 of the 1894 Act within a specified time limit and the land acquisition Collector was also directed to pay the undisputed compensation to the petitioners. The petitioners claim that the respondent authorities have failed and neglected to hear out the objection of the petitioners and/or to pay undisputed amount of the compensation in terms of the order passed in the writ petition. Alleging that the petitioners have incurred a huge loss on account of interest of unpaid sum and also that the land value has increased considerably since 2007, the petitioners have filed this writ petition.

6. Mr. Bera, learned Counsel representing the petitioners submitted that the possession of the land belonging to the petitioners, which were involved in the acquisition proceedings, were never taken from the petitioners in accordance with law. He submitted that the notification under Section 4 of the 1894 Act was published for a public purpose namely, for Rajarhat Newtownship Project. While publishing the declaration under Section 6 of the 1894 Act the public purpose was changed to a road project connecting Newtown Rajarhat Road and NH-34. He further submitted that the property was sought to be acquired by invoking the provisions of Section 17 of the 1894 Act and the notification under Section 4 was published on 27.06.2006 but the same has not been utilised till date. He submitted that since the possession of the land was not taken, the land of the petitioners, did not vest in the Government. The compensation has also not been paid to the petitioners. Mr. Bera thus submitted that the acquisition proceeding stood lapsed.
7. Mr. Bera contended that since the land of the petitioners has not yet been utilised, the authorities should be directed to put the said land to public auction. In support of such contention, Mr. Bera placed reliance upon the decision of the Hon'ble Supreme Court in the case of ***State of Kerala and Others vs. M. Bhaskaran Pillai*** reported at ***AIR 1997 SC 2703 and Mysore Urban Development Authority by its Commissioner vs. Veer Kumar Jain and Ors.*** reported at ***AIR 2010 SC 2153***.
8. Mr. Majumdar, learned Senior Advocate representing the WB HIDCO seriously disputed the contentions of Mr. Bera. He contended that the writ petitioner approached this Court on an earlier occasion by filing WP No. 18009 (W) of 2009 with the limited prayer to refer the objection of the petitioners before the Land Acquisition Court under Section 18 of the 1884 Act and for a direction upon the authority to pay the compensation money awarded in favour of the petitioners. He submitted that the petitioner is now trying to make out a new case by alleging that the land of the petitioner did not vest in the Government as the possession of the lands were allegedly not taken from the petitioners in accordance with law. On the issue of change of public purpose, Mr. Majumdar

placed reliance upon a Division Bench Judgment of this Court in WPA 27353 of 2017 in the case of ***Shanti Ganatantra Sanghati Mancha and ors. vs. The State of West Bengal and ors.*** delivered on 09.05.2024 in support of his contention that once the land is acquired it vests in the State free from all encumbrances and the person interested cannot claim the right of restoration of land on any ground whatsoever.

9. Mr. Mahata learned Additional Government pleader submitted that the possession of the land of the petitioners were taken and the same has been handed over to HIDCO. He submitted that the land once vested cannot be divested. He prayed for dismissal of the writ petition.
10. Heard the learned Advocates for the parties and perused the materials placed.
11. Record reveals that the Government of West Bengal Land and Land Reforms Department issued a notification under Section 4 of the Land Acquisition Act, 1894 (for short "Act I of 1894") dated 12.06.2006 which was published in the Kolkata Gazette Extra Ordinary dated 27.06.2006. It appears therefrom that several lands including the lands of the petitioners were required by the Government for a public purpose namely, for Rajarhat Newtownship Project in Mouja Gopalpur GL no. 2 of Police Station Rajarhat in the district of 24 Parganas (North) measuring about 9.590 acres. It further appears therefrom that in exercise of powers conferred by Subsection (4) of Section 17 of the Land Acquisition Act 1894, the Government is pleased to direct that the provisions of Section 5A of the Act shall not apply to the lands as described in the Schedule thereto to which in the opinion of the Government, the provisions of Sub-Section 1 of the Section 17 of the Act are applicable. Thereafter, the declaration under Section 6 of Act 1 of 1894 dated 02.03.2007 was published in the Kolkata Gazette Extra Ordinary dated 15.03.2007.
12. Subsequent thereto, notices under Sections 9(3) and 9(4) of the 1894 Act dated 29.05.2007 were issued. Record reveals that the Collector made an award on 13.09.2007. Notice under Section 12(2) of the 1894 Act was issued offering payment of Rs. 16,20,015/- to the writ petitioners.

13. The petitioner company claims to have filed an objection on 27.09.2007 against determination of the amount of compensation by the Land Acquisition Collector and prayed for a reference under Section 18 of the 1894 Act before the concerned Land Acquisition Court.
14. It appears from the Declaration that the Government specified that the land is needed for a public purpose namely, for road project connecting Newtown Rajarhat Road and NH-34.
15. Mr. Bera would contend that the public purpose indicated in the notification under Section 4 of Act I of 1894 was for Rajarhat Newtown Project, and the same could not have been altered in the declaration under Section 6 of Act I of 1894 Act.
16. The issue as to whether acquisition proceedings are to be set aside on the alleged ground that has been change of user of the land from the purpose for which it was acquired and the purpose for which it is presently utilised is no longer *res integra*. The Hon'ble Division Bench in **Shanti Ganatantra Sanghati Mancha** (supra) after noting several decisions of the Hon'ble Supreme Court summarised the law as follows.

"30. Thus, the law which could be summarised based on the above decisions is that once the land is acquired it vests in the State free from all encumbrances. It is not concern of the land owner how his land is used and whether the land is being used for the purpose for which it was acquired or for any other purpose; he (land owner) becomes a persona non grata once the land vests in the state; he has a right to get compensation only for the same and the person interested cannot claim the right of restoration of land on any ground whatsoever. The same principle has been reiterated in V. Chandrasekaran and Another."

17. The Hon'ble Division Bench held that once the land is acquired it vests in the State free from all encumbrances and once the land vests in the State, the land owner only has right to get compensation for the same and the person interested cannot claim the right of restoration of land on any ground whatsoever.

18. In view of the proposition of law laid down by the Hon'ble Division Bench in ***Shanti Ganatantra Sanghati Mancha*** (supra), this Court is not inclined to accept the contention of Mr. Bera that the acquisition proceeding is liable to be set aside on the alleged ground that the public purpose indicated in the notification under section 4 of Act I of 1894 was changed while publishing the declaration under Section 6 of Act I of 1894.
19. In the case on hand the provisions of Section 17 of Act I of 1894 was invoked Sub-Section (1) of Section 17 states that in case of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on expiry of 15 days from the publication of the notice mentioned in Section 9, Sub-Section (1), take possession of any land needed for a public purpose and such land shall thereupon vest absolutely in the Government free from all encumbrances. In cases where section 17 of Act I of 1894 is invoked the Collector can take possession of any land needed for a public purpose even before passing of an award and upon such possession being taken the land shall thereupon vests absolutely in the Government free from all encumbrances.
20. Mr. Bera would vehemently contend that the possession of the land of the petitioner was not taken and, therefore, the land of the petitioner did not vest in the government. Such submission of Mr. Bera cannot be accepted for the following reasons.
21. In the earlier writ petition being WP 18009 (W) of 2009 the petitioner approached the Writ Court with a prayer to refer the objection/case of the petitioners before the land Acquisition Court at Barasat, 24 PGS (North) in accordance with the provisions of Section 18 of the Act 1 of 1894. The petitioner also prayed for an interim order granting liberty to the petitioners to withdraw and/or receive the cheque for Rs. 60,20, 015/- towards the compensation already decided by the respondent authorities without prejudice to their rights and contentions in the writ petition. The said writ petition was disposed of by an order dated 03.05.2010 by directing the Land Acquisition Collector to forthwith refer the case of the petitioners to the appropriate Land

Acquisition Court in accordance with Section 18 of the Land Acquisition Act, 1894 within 30 days from the date of communication of the said order and the Land Acquisition collector was directed to tender payment of the awarded compensation to the petitioners forthwith and the petitioners were given liberty to receive payment under protest as to the sufficiency of the amount of compensation. In the earlier writ petition the writ petitioner did not allege that the land did not vest in the government as possession was not taken from the petitioners. The only grievance of the petitioners at the relevant point of time was that the respondent authorities did not make a reference under Section 18 of the 1894 Act and also that the payment of compensation amount was not tendered to the petitioners. On the contrary, there is a specific admission in the said writ petition that huge amount of land has been acquired by the Government for public purpose which the Government has in turn developed and sold out to private individuals making huge profit therefrom.

22. This Court is of the considered view that the plea that the land did not vest as possession was allegedly not taken from the petitioners ought to have been raised by the petitioners in the earlier writ petition. The same having not been raised in the earlier writ petition, such an issue cannot be raised in this writ petition as the same would be barred by the principles of constructive *res judicata*.
23. That apart it is now judicially settled that drawing of panchnama of taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of land. Any claim of retaining possession of the said lands is wholly illegal and such possession ensures to the benefit of the owner. (See (2020) 8 SCC 129, Para 274). An entry in the record of rights does not create any title nor does it extinguish the same. A mere entry in the record of rights in favour of the petitioners cannot come to their aid in the case on hand.
24. This Court is, therefore, of the considered view that the petitioners failed to prove that they are in possession of the land in question. Possession of the land in question was handed over by the government to WBHIDCO for the public purpose as indicated in the declaration. For all the aforesaid reasons,

this Court holds that the land of the petitioners stood vested to the State free from all encumbrances.

25. The writ petitioners have admitted in Paragraph 16 of the amended writ petition that the respondent authorities have only utilised a negligible part of the land for the purpose of constructing a narrow road and only a very small portion of the proposed road has been constructed and the said road has not been connected to the public road as was originally planned. It is on the basis of such statement that the writ petitioners claim return /release of their lands on the ground that the same has not been utilised till date.
26. In **M. Bhaskara Pillai** (supra), the issue that fell for consideration was how the balance land which was acquired for a public purpose but remains unutilised after the public purpose was achieved can be disposed of. On such issue the Hon'ble Supreme Court held that if the land is acquired for the public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose and in case there is no other public purpose for which the land is needed, then such land should be put to public auction and the price fetched in the public auction can be better utilised for the public purpose envisaged in the Directive Principles of the Constitution. In the case on hand, there is nothing on record to suggest that the land which was acquired for a public purpose is not needed for such public purpose or any other public purpose. Therefore, the said decision cannot come to the aid of the writ petitioners.
27. In **Mysore Urban Development Authority** (supra) it was held that if possession of the acquired land has not been taken, the power and discretion under Section 48(1) of the LA Act can be exercised by the State Government. The said decision is distinguishable on facts as in the case on hand this Court has already held that the possession of the acquired land has been taken. Therefore, the said decision cannot come to the aid of the petitioners.
28. For all the reasons as aforesaid this Court is not inclined to grant any relief to the writ petitioners. The writ petition accordingly fails and the same stands

dismissed. Consequently, the application stands disposed of. There shall be, however, no order as to costs.

29. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)

(P.A.-Sanchita, Rinki)