

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

**PRESENT:
THE HON'BLE JUSTICE BIVAS PATTANAYAK**

**W.P.A. 26790 of 2022
Tara Sankar Ghosh
versus
The State of West Bengal & Ors.**

For the Petitioner	: Mr. Anindya Lahiri, Advocate Ms. Pranati Das, Advocate
For the State	: Mr. Samrat Sen, Ld. AAG Mr. Dipanjan Datta, Advocate Mr. Abhishek Banerjee, Advocate
Heard on	: 02.05.2024, 16.05.2024, 21.05.2024
Judgment on	: 02.12.2024

Bivas Pattanayak, J. :-

1. This writ petition has been filed by the petitioner under Article 226 of the Constitution of India praying for handing over of possession of land being L.R. Dag No.263, Khatian No.1055, Mouza-Garbhukta Nandanpur, J.L. No.8, Budge Budge Municipality, Kolkata-700137 to the petitioner and also for payment of compensation to the petitioner for illegal occupation of 5 decimal of land out of 44 decimal situated at L.R. Dag No.263, Khatian No.1055, Mouza-Garbhukta Nandanpur, J.L. No.8, Budge Budge Municipality, Kolkata-700137.

2. The petitioner's case in nutshell is as follows:

(i) The father of the petitioner, Late Deboprasad Ghosh was recorded as owner of the plot being L.R. Dag No.263, Khatian No.

1055, Mouza-Garbhukta Nandanpur, J.L. No.8, Budge Budge Municipality, Kolkata-700137 and after his demise, the petitioner being a legal heir, acquired the right over the said plot of land by operation of law of inheritance.

(ii) The petitioner in the year 2009 made an application to the State Public Information Officer, Fire and Emergency Services Department, under Right to Information Act, 2005 seeking certain information regarding acquisition of plot of land by the West Bengal Fire Services Department. In reply to such application, it is informed by Divisional Fire Officer vide Memo No. WBFES/C/342/09 dated 14th May, 2009, that as per the status report of Block Land and Land Reforms Officer, the West Bengal Fire Services Department is recorded as occupier of the said plot of land in the record of rights.

(iii) In letter under Memo No. WBFES/2335/1(2)/PA dated 27th July, 2009, the Director General of West Bengal Fire and Emergency Services addressed a letter to the District Magistrate and Collector, South 24 Parganas the petitioner was requested to pursue the matter with the Special Land Acquisition Officer since the matter relates to the acquisition of land and payment of compensation.

(iv) Accordingly, the petitioner made an application before the Special Land Acquisition Officer on 28th October, 2009. Since there was no reply, the petitioner preferred appeal before the State Information Commissioner. Thereafter, the petitioner received information from Special Land Acquisition Officer vide communication

dated 23rd February, 2015 that no land acquisition proceeding has been initiated against the said plot of land.

(v) After waiting for years and approaching the authorities on several occasions, the petitioner made a representation to the authorities by letter dated 10th December, 2018. Since such representation was not disposed of, the petitioner filed a writ petition before this Hon'ble Court being WP No. 5745 (W) of 2019, which was disposed of directing the respondent no.6 to consider and dispose of the representation of the petitioner.

(vi) The petitioner was called upon to appear for hearing. The petitioner submitted written submissions with annexure before the Special Land Acquisition Officer on 16th January, 2020. However, since no order was passed, the petitioner again made an application to the State Public Information Officer. But no information was provided to him even after passage of long period. The petitioner preferred a contempt application being CPAN 325 of 2021.

(vii) During the pendency of the contempt application, hearing notice was given to the petitioner. On 9th November, 2021, the petitioner submitted written submissions along with enclosures. It transpired from order dated 9th November, 2021 that Divisional Fire Officer submitted a document revealing that they are the tax payer of holding No. 12/2 D.B.C.R. Road, Budge Budge which he claimed to be plot being L.R.-263/ RS 187 and as per records, they are the existing possessors.

(viii) Be that as it may, from the RTI query, it appears that under L.R. Plot No. 263 Khatian No. 1055, Mouza-Garbhukta Nandanpur is not mentioned or recorded in the holding/premise no. 12/2 D.B.C.R. Road, Budge Budge as per the books of record and assessment of Budge Budge Municipality. Thus both the plots are separate and admittedly plot no. 263 is not effected by land acquisition proceedings.

(ix) The respondent authorities are illegally occupying the portion of the petitioner's land without resorting to the due process of law of acquiring the same. Hence this writ petition.

3. The State-respondent no.2 and 3 filed their report in the form of affidavit with the following contentions *inter alia*:

(i) The disputed plot is owned by respondent nos. 2 and 3 and rightly been possessed by the West Bengal Fire and Emergency Services Department. As per the report of Block Land and Land Reforms Officer, the West Bengal Fire and Emergency Department is the recorded owner of the disputed plot. Though the petitioner claims that his late father was the recorded owner, but respondent no.3 has been paying municipal taxes under Budge Budge Municipality since 1979 till date.

(ii) A letter has been issued by the Director of West Bengal Fire Service to the Executive Engineer, PWD proposing a construction over the land in question. A letter has also been issued by the Director of West Bengal Fire Service to the Officer-in-Charge, Budge Budge Fire Station regarding opening of fire station under Civil Defence Scheme.

(iii) Inspection was carried out by respondent no.5 being the BL & LRO regarding the ownership of the disputed plot.

(iv) A letter has been issued by the Chairman, Budge Budge Municipality to the Director of West Bengal Fire Services wherefrom it appears that the disputed plot of land is owned and occupied by the answering respondents.

4. Respondent no.6, Special Land Acquisition Officer, 24 Parganas (South) also filed a status report. It is contended in the status report that at the time of hearing, neither the writ petitioner nor the respondent could produce documents to justify their claim. It was also found that the aforementioned plot was not acquired at all, so land acquisition department has no role for disbursement of compensation or occupational charges.

5. Mr. Anindya Lahiri, learned advocate appearing for the petitioner submitted that the plot being L.R. Dag No.263, Khatian No.1055, Mouza-Garbhukta Nandanpur, J.L. No.8, Budge Budge Municipality, Kolkata-700137 has been utilised and possessed by the respondent-West Bengal Fire Services Department without any acquisition as would be evident from the status report submitted by respondent no.6, Special Land Acquisition Officer, therefore, the respondent nos.2 and 3, West Bengal Fire Services Authority are in illegal occupation of the land in question. In the year 2018, the petitioner made a representation alleging of such illegal occupation by the respondent West Bengal Fire Services Authority. Since the representation was not considered by the concerned authority, the petitioner filed a writ petition being WP No. 5745 (W) of 2019 wherein

direction was issued for consideration of the representation. The representation was kept pending in spite of order of this Hon'ble Court and the petitioner had to file a contempt application. During the pendency of the contempt application, the notice of hearing was issued and the petitioner submitted written submissions along with annexures. It transpired from the order dated 9th November, 2021 of the Special Land Acquisition Officer that the respondent no.3 submitted document revealing that they are the taxpayer of holding no. 12/2 D.B.C.R. Road, Budge Budge which he claimed to be plot being L.R.-263/ RS 187. Be that as it may, the land comprised within L.R. 263 and holding No. 12/2, D.B.C.R. Road, Budge Budge are separate land as would be evident from the letter of the Municipality.

The respondent West Bengal Fire Services Authorities are in illegal occupation of land and as such, the petitioner is entitled to possess the land in question and also receive compensation in respect of the illegal occupancy of the land by the respondent authority.

He further submitted that where a private property has been expropriated, delay in claiming possession or claiming right over the property cannot be fatal. It is the cardinal principle of the rule of law that nobody can be deprived of liberty or property without due process or authorization of law. Moreover, since there was no acquisition, in a democratic body polity the State should not be allowed to deprive the petitioner of its property without adhering to the law. In support of his aforesaid contentions, he relied on the following decisions:

- (i) ***Tukaram Kana Joshi and Others Through Power-of-Attorney Holder versus Maharashtra Industrial Development Corporation and Others*¹**
- (ii) ***Sukh Dutt Ratra and Another versus State of Himachal Pradesh and Others*²**

In light of his aforesaid submissions, he prayed for appropriate orders in terms of prayers made in the writ petition.

6. On the contrary, Mr. Samrat Sen, Ld. AAG appearing for the State-respondents submitted that the West Bengal Fire Services Authorities are recorded as owner in respect of holding No. 12/2, D.B.C.R. Road, Budge Budge and its name has been duly mutated in the records of Budge Budge Municipality and they have been paying taxes since 1979. The record of rights also shows that the West Bengal Fire Services Authorities are the owner and occupier of the land, thus the claim of the petitioner that his predecessor-in-interest was the owner of the land does not stand to reason. The respondent is in possession of the land since 1964. There is considerable delay in raising such claim by filing the present writ petition. The petitioner has not produced any document of ownership or title to the plot in question. In the present case at hand, title to the property is disputed which cannot be decided in a writ petition. The decision in *Sukh Dutt Ratra (supra)* is a case of forcible dispossession of a person of their private property without due process of law, which is distinguishable from the case at hand. Further in *Tukaram Kana Joshi (supra)* the appellant was

¹ (2013) 1 SCC 353

² (2022) 7 SCC 508

an illiterate farmer and considering the same, the Hon'ble Supreme Court condoned the delay which is also distinguishable from the case at hand.

In light of his aforesaid submissions, he prayed for dismissal of the writ petition.

7. Mr. Abhishek Banerjee, learned advocate for the State-respondents submitted that the respondent-West Bengal Fire Services Authorities as well as the petitioner during hearing failed to produce any relevant document as per their claim. It is a fact that there is no acquisition of the land in question by the State-respondents and, therefore, the question of payment of compensation or payment for illegal occupation is uncalled for.

8. Having heard learned advocates for respective parties, following issues have fallen for consideration:

- (i) Whether the petitioner is entitled to delivery of possession of the land-in-question?
- (ii) Whether the petitioner is entitled to compensation for illegal occupation, if any, by the respondent-West Bengal Fire and Emergency Services Authorities?

ISSUE NO.1: WHETHER THE PETITIONER IS ENTITLED TO DELIVERY OF POSSESSION OF THE LAND-IN-QUESTION?

9. It is the contention of the petitioner that his late father, Deboprasad Ghosh was the recorded owner of the land being L.R. Dag No.263, Khatian No.1055, Mouza-Garbhukta Nandanpur, J.L. No.8, Budge Budge Municipality, Kolkata-700137 and after his demise, the petitioner being a legal heir has acquired right over the said plot of land by operation of law of inheritance. It is the specific case of the petitioner that respondent nos.

2 & 3 are in illegal occupation of Plot No. 263, under Mouza-Garbhukta Nandanpur, without acquisition. Be that as it may, the pleadings in the writ petition is silent as to whether the predecessor-in-interest of the petitioner took any steps for recovery of the land in question before any civil court alleging of illegal occupancy by the respondents-West Bengal Fire and Emergency Services Authorities or prayed for getting compensation. From the documents annexed to the report on affidavit filed by the respondent nos. 2 and 3, it is found that the names of respondent nos. 2 and 3 have been recorded in the '*Montoby*' Column of the R.S. record of rights as well as in the L.R. record of rights. The petitioner claims that the LR Plot No. 263 and the holding No. 12/2 D.B.C.R. Road are separate plots. *Per contra*, respondent nos. 2 and 3-West Bengal Fire and Emergency Services Authorities have asserted that the disputed plot is owned by the respondent nos. 2 and 3 and upon mutation they have been paying municipal taxes to Budge Budge Municipality since 1979 which is continuing till date. The respondent nos. 2 and 3 are paying taxes in respect of holding no.12/2, D.B.C.R. Road, Budge Budge since 1983 as is revealing from the documents annexed to the report. In the notice under Section 147 of Bengal Municipal Act, 1932, the name of owner of holding no.12/2, D.B.C.R. Road, Budge Budge is Government of West Bengal, PWD Housing Scheme Department and occupier is Fire Services. Referring to letter dated 7th May, 2022 of Budge Budge Municipality (Annexure P-15 at page 65 of the writ petition), it is argued on behalf of the petitioner that L.R. Plot No. 263 is not mentioned/recorded against holding no.12/2, D.B.C.R. Road hence the plots are separate. Be that as it may, by such

information, it cannot be precisely ascertained that L.R. Plot No. 263 and holding no.12/2, D.B.C.R. Road, Budge Budge are distinct and separate land. The information only gives an indication that the Plot No. 263 is not mentioned in the books of the Municipality, nothing more, nothing less. Therefore, whether the plot being L.R. Dag No.263, Khatian No.1055, Mouza-Garbhukta Nandanpur, J.L. No.8, Budge Budge Municipality, Kolkata-700137 and the holding no. 12/2 D.B.C.R. Road under Budge Budge Municipality are identical or not are disputed facts which requires appreciation of evidence by civil court. Save and except record of rights the petitioner has not produced any document of title of his predecessor-in-interest. Further neither the predecessor-in-interest of the petitioner nor the petitioner himself has filed any civil suit for recovery of the land in question which is alleged to have been illegally possessed by the West Bengal Fire and Emergency Services Department. Such being the position, the prayer for delivery of possession of land-in-question falls short of merit.

ISSUE NO.2: WHETHER THE PETITIONER IS ENTITLED TO COMPENSATION FOR ILLEGAL OCCUPATION, IF ANY, BY THE RESPONDENT-WEST BENGAL FIRE AND EMERGENCY SERVICES AUTHORITIES?

10. It is not in dispute that the respondent nos. 2 and 3 are paying municipal taxes to the Budge Budge Municipality in respect of holding no.12/2, D.B.C.R. Road, Budge Budge. It is already found in the foregoing paragraph that from the materials on record, it cannot be ascertained that L.R. Plot No. 263 and holding no.12/2, D.B.C.R. Road, Budge Budge are distinct and separate. Such being the position, it cannot be said that respondent nos. 2 and 3 are in illegal possession since they are paying

taxes to the Municipality. Thus, prayer for payment of compensation for illegal possession is also not tenable.

11. The proposition of law advanced by Mr. Lahiri, learned advocate for the petitioner relying on *Sukh Dutt Ratra (supra)* and *Tukaram Kana Joshi (supra)* is substantial that delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause of action etc. Be that as it may, in the case of *Sukh Dutt Ratra (supra)*, there was forcible dispossession of a person of their private property without following due process of law which is not the case at hand and thus is distinguishable. The decision in *Tukaram Kana Joshi (supra)* shows that the claimants are illiterate and inarticulate persons, who have been deprived of their fundamental rights by the State, without resorting to any procedure prescribed by law. The facts of the cited decision is also distinguishable.

12. In light of the aforesaid discussion, the writ petition being **W.P.A. 26790 of 2022** stands dismissed.

13. All connected applications, if any, stand dismissed.

14. Interim order, if any, stands vacated.

15. Urgent photostat certified copy of the order, if applied for, be given to the parties upon compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)