

8 01.8.2024
Sc Ct. no.2

WPA 28752 OF 2022

Subarna Biswas (Samadder)

Vs.

The State of West Bengal & Ors.

Mr. Prosenjit Mukherjee
Ms. Manisa Mondal.

.....For the Petitioner

Mr. Ansar Mandal
Ms. Somashree Dey.

.....For the Respondents
State

On the prayer of Mr. Prosenjit Mukherjee, learned counsel appearing for the petitioner time to file supplementary affidavit stands extended till today and the supplementary affidavit, pursuant to the leave granted by the Court earlier, filed today in Court is taken on record. Copy has been served upon the learned State counsel.

Mr. Ansar Mondal, learned Additional Government Pleader appears for the respondents.

The petitioner contends that, the petitioner is the granddaughter-in-law of one **Kshitish Chandra Biswas**, since deceased. The deceased was the owner of a piece of land. The land was acquired in **1988-89** and compensation was paid on **January 17, 1994** to the said deceased. The petitioner is the successor-in-interest of the claim arising out of the said acquisition of land.

The petitioner claims land loser certificate to be issued by the respondent no.2, the jurisdictional Collector.

It is submitted on behalf of the petitioner that, in view of the policy and scheme framed by the State the land losers might get an employment as and by way of compensation. For receiving such employment, the land losers **first** apply before the **National Employment Exchange** and then subject to fulfillment of all the relevant conditions, such land losers may receive employment. Therefore, the first step and/or condition is that, whose land has been acquired must receive the land loser certificate before proceeding any further.

Mr. Prosenjit Mukherjee, learned counsel appearing for the petitioner submits that, though the land acquisition proceeding was held in **1988-89** and the compensation was paid in **1994** but till date the land loser certificate has not been issued in favour of the land losers. The petitioner being the successor-in-interest now claims the land loser certificate.

Mr. Ansar Mandal, learned Additional Government Pleader submits that, the jurisdictional Collector being the respondent no.2 is the appropriate authority who shall consider the case of the petitioner whether the petitioner is eligible to receive any such land loser certificate.

After considering the submissions made on behalf of the parties and upon perusal of the materials on record it appears to this Court that, through this writ petition the petitioner has challenged the impugned order dated **November 10, 2022, Annexure-P11 at page 112** to the writ petition passed by the respondent no.5.

At the outset, it further appears to this Court that, as per the policy decision and scheme framed by the State to provide an employment to a land loser by way of a compensation, the **first** condition has to be fulfilled is that, the land loser must receive a proper land loser certificate to be issued by the jurisdictional Collector. It might so happen that, the jurisdictional Collector after considering the case of an alleged land loser can reject his prayer holding that, the person is not an actual land loser in accordance with laws. It might also happen that, even after receiving the land loser certificate, a *bona fide* land loser may not opt for obtaining employment and may not apply before the National Employment Exchange. Therefore, the **first** condition that has to be fulfilled is to receive the land loser certificate by a *bona fide* and actual land loser and after receiving such certificate, if such a land loser applies before the National Employment Exchange, then only the concerned employment exchange will be in seisin of the issue.

In the facts of this case, the petitioner has not yet received the land loser certificate therefore, there was no

question of assuming any authority to decide any issue by the concerned employment exchange.

For the foregoing reasons and discussions this Court is of the firm view that, the impugned order dated **November 10, 2022** passed by the respondent no.5 is wholly without and/or in excess of jurisdiction and is not tenable in law.

Accordingly, the order impugned dated **November 10, 2022, Annexure-P11 at page 112** to the writ petition stands **set aside** and **quashed**.

Since the petitioner claims the land loser certificate, to subserve justice, the petitioner shall be at liberty to submit a comprehensive representation claiming land loser certificate before the respondent no.2 within a period of **two weeks** from date.

In the event, such representation is submitted by the petitioner, the respondent no.2 upon issuing prior notice to all the interested parties and any other authority/authorities it deems fit and proper and after granting them an opportunity of hearing shall decide the claim of the petitioner for land loser certificate by passing a reasoned order strictly in accordance with law.

It is made clear that, the entire exercise as directed above, shall be carried out and completed by the respondent no.2 positively within a period of **eight weeks** from the date of communication of this order and the reasoned order shall be communicated to the petitioner

and the parties who shall participate in the hearing within a **further** period of **two weeks** from date of the said reasoned order to be passed.

It is made clear that, this Court has not gone into the merits of the claim of the petitioner. The petitioner and all interested parties who shall participate in the hearing shall be at liberty to urge whatever points they wish to urge in support of their claims by relying upon whatever records and documents they wish to reply upon before the respondent no.2 but the same shall not travel beyond the scope of issuance of land loser certificate.

In the event, the petitioner succeeds to her claim the respondent no.2 shall take all necessary and consequential steps in accordance with law positively within a further period of **four weeks** from date of the said reasoned order to be passed.

It is made clear that, this order shall not create any right or equity in favour of the petitioner or any of the parties who shall participate in the hearing before the respondent no.2 unless they succeed to their claims strictly in accordance with law.

It is further made clear that, while conducting the hearing and passing the reasoned order, the respondent no.2 shall be free to apply its independent mind taking all circumstances and facts into account with regard to the eligibility of receiving land loser certificate by the petitioner and other interested party, if any, in

accordance with law. The respondent no.2 shall not be influenced by any observation, if made by this court on the issue.

It is further made clear that, if the petitioner succeeds to receive the land loser certificate then she may proceed for her further claim in terms of the State policy if she is otherwise eligible to do so strictly in accordance with law.

It is also made clear that, this Court has not gone into the merits of the writ petition insofar as the petitioner's claim for employment is concerned as a land loser. If the petitioner succeeds to receive the land loser certificate, the petitioner then shall be at liberty to proceed with her further claim, if any, in accordance with law.

Since affidavits are not called for, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

With the above observations and directions, this writ petition, **WPA 28752 of 2022** stands disposed of, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)