

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

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

**W.P.A. 27591 of 2007
Kalpana Mondal
versus
Metro Railway, Kolkata & Ors.**

For the Petitioner : Mr. Dipankar Mandal, Advocate
Mr. Abdul Aziz Mondal, Advocate

For the Respondents : Mr. Sanajit Kumar Ghosh, Advocate

Heard on : 15.12.2023

Judgment on : 03.04.2024

Bivas Pattanayak, J. :-

1. This writ petition is filed by the petitioner under Article 226 of the Constitution of India for directing and commanding the respondents to abide by the order of release dated 27th November, 2002 and for quashing the judgment and order dated 29th November, 2006 of the Competent Authority, Metro Railway, Kolkata passed in Acquisition Claim Case No. 473 of 2005 and judgment and order dated 23rd October, 2007 of the Appellate Authority in Acquisition Claim Appeal No. 2 of 2007 and also for grant of award of Rs. 24,25,808/- towards compensation for acquisition of house property of the petitioner.

2. The case made out by the petitioner is as follows:

- (i) The petitioner is the owner of the property within L.R. Plot No. 536 (part of R.S. Plot No. 529), L.R. Khatian No. 1139 of Mouza-Balia, J.L.

No. 46, Police Station-Sonarpur, District-24 Parganas (South), Kolkata 700084, bearing Holding No. 82 of Ward No.1 of Rajpur-Sonarpur Municipality measuring an area of 2 *cottahs* of land by way of purchase under registered deed of sale dated 27th September, 1995.

(ii) The petitioner purchased the said plot of land with a view to raise construction for residential purpose. The petitioner completed construction of the ground floor and casting of the first floor in the first quarter in the year 2002. The ground floor of the building comprised of a floor area of 748 sq. ft. consisting of two bedrooms, one drawing-cum-dining room, a kitchen, a bath-cum-privy and two verandahs.

(iii) By notification dated 9th June, 2002, the respondent no.3, Competent Authority, Metro Railway, Kolkata informed that the land in question is to be acquired for the purpose of addition, alteration or extension of the Kolkata Metro Railway alignment from Tollygunge to New Garia in terms of notification of the Government of India, Ministry of Railways (Rail Montranalay) in Gazette of India (Extraordinary) on 28th March, 2002.

(iv) On 13th November, 2002, the petitioner submitted an objection-application praying for release of her property from the purview of said acquisition. It was informed by the Competent Authority that the said plot of land of the petitioner was not required for the purpose of construction of Metro Railway and the objection-application filed by the petitioner was allowed. Thereafter, the petitioner after such release constructed the first floor of the building which contained a total area of about 848 sq. ft. consisting of one bedroom, one dining room, one

drawing room, one study room, one bath room, one toilet and a kitchen and a stair room and a prayer room was also constructed in the second floor of the building containing an area of 264 sq. ft.

(v) After such release of the house property of the petitioner, an amended notification was issued by the Central Government on 28th February, 2003 and thereafter another notification was issued by Competent Authority on 29th March, 2003 inviting applications for compensation. The petitioner was of the belief that his house property was beyond the purview of the said notification.

(vi) All of a sudden, the petitioner received the notification dated 5th September, 2005 which contained an intimation to the effect that on the basis of an application and the other documents submitted by the Metro Railway authority before the Competent Authority, an order has been passed on 3rd August, 2005 directing the petitioner to appear before the Competent Authority. On 8th September, 2005, the petitioner made a prayer for release of her completed residential building which was rejected and the petitioner was directed to submit appropriate application for compensation. The petitioner finding no other alternative filed an application for compensation of Rs. 23,71,300/-.

(vii) The Competent Authority granted compensation of Rs. 9,22,285/- in favour of the petitioner. Being aggrieved by such award, the petitioner preferred appeal before the Appellate Authority and the compensation was enhanced to Rs. 11,13,070/-.

(viii) Challenging such order passed by the Competent Authority and the Appellate Authority, the petitioner has preferred the present writ petition.

3. The respondents-Metro Railway Authority filed their affidavit-in-opposition contending that the learned Competent Authority as well as the learned Appellate Authority has rightly applied the market value to assess the compensation. The award in respect of other plots within the same mouza and situated within or about 30 meters of the petitioner's plot was passed considering the market value of land @ Rs. 1,50,000/- per *cottah* as provided by District Sub-Registrar Officer, 24-Parganas (South) and possession of most of the land has been taken over by Metro Railway. Both the learned Competent Authority as well as learned Appellant Authority have followed the provisions of Section 13.4(a) of Metro Railway's (Construction of Works) Amendment Act, 1987 (hereinafter referred to as 'Act of 1987'), while determining the market value. Further as per Section 16A(5) of the Act of 1987, the determination of compensation by the Appellate Authority is final. The respondent authorities have already incurred expenditure for such project to the tune of Rs. 430 crores and any delay in getting the physical possession of the land will increase the cost of the project as well as defer the targeted date of commissioning of the project affecting the public interest at large. The present writ petition is vexatious and harassing and should be dismissed.

4. Mr. Dipankar Mandal, learned advocate for the petitioner submitted that the petitioner at the first instance when the land in question was notified by the Metro Railway Authority raised objection and prayed for

release of the land. The Competent Authority by Order No. 6 dated 27th November, 2002 passed order allowing the objection of the petitioner and released the land. Thereafter the petitioner made construction of another floor. However, all of a sudden, the petitioner was once again asked to appear before the Competent Authority. The petitioner again made an application for release of her house property but the same was rejected and she was constrained to file application for getting compensation. The petitioner during the hearing before the Competent Authority as well as the Appellate Authority raised such issue but that has been turned down. The Appellate Authority while arriving at the compensation has not taken into consideration the actual market value of the land with buildings. Referring to the judgment of the Appellate Authority passed in another Acquisition Claim Appeal No. 33 of 2006, he submitted that the valuation of the property within similar plot was considered at the rate of Rs. 650/- per sq. ft. whereas, in the case of the petitioner's property, the rate of valuation of the property has been considered at Rs. 500/- per sq. ft. The rate of petitioner's property should also be considered at Rs. 650/- per sq. ft. and the compensation should be enhanced accordingly. In light of his aforesaid submissions, he prayed for release of the land or in the alternative enhancement of the compensation amount.

5. Mr. Sanajit Kumar Ghosh, learned advocate for respondents-Metro Railway in reply submitted that the question of release of the land does not arise at all since the project has already been initiated by the Metro Railway. The petitioner during survey has consented to receive compensation and considering the said aspect the prayer for release of the

land was turned down by both the authorities. So far as the enhancement of compensation is concerned, he submitted that the Appellate Authority has enhanced the compensation amount after making inspection of the plot in question and thus the same should not be interfered with. Moreover, the determination of market value has been made following the provision of Section 13.4(a) of the Act of 1987. Further, the order of the Appellate Authority determining the compensation is final in terms of Section 16A(5) of the Act of 1987. In light of his aforesaid submissions, he prayed for dismissal of the petition.

6. Having heard learned advocate for the respective parties, following two issues need to be considered in the present writ petition:

- (i) Whether the petitioner is entitled to have release of her property in question.
- (ii) Whether the petitioner is entitled to enhancement of compensation.

7. With regard to the first issue whether the petitioner is entitled to have release of her property in question, it is found from Order No. 6 dated 27th November, 2002 (Annexure P/3 of the writ petition at page no. 46) that the objection of the petitioner against acquisition of her property was allowed on the basis of a petition filed by Metro Railway stating that the objector's land in the case was not required for the purpose of construction of Metro Railway. From the impugned judgment of the Competent Authority passed in the Acquisition Claim Case No. 473 of 2005 as well as of the Appellate Authority in Acquisition Claim Appeal No. 2 of 2007, it manifest that after notification for acquisition under Section 7 of the Act of 1987, the claimant

appeared on 27th November, 2002. The Metro Railway, in the meantime, filed a petition stating that the land was not required for the purpose of construction of Metro Railway. Again on 3rd August, 2005 the case record was put up on the basis of a petition along with some enclosures filed by the Metro Railway. The Metro Railway in that petition stated that due to oversight the objection filed by the owner Smt. Kalpana Mondal (the petitioner herein) against Gazette notification issued under Section 7(1) of Metro Railway (Construction of Works) Act, 1987 was allowed on the basis of the report submitted by the Metro Railway. But in the present circumstances, Metro Railways very much requires the following property for construction work and the same may be seen from the drawing attached with the Gazette Notification under Section 10(1) of the Act of 1987 in which the building has been listed for acquisition. On such ground, the Metro Railway prayed for review of Order No. 6 dated 27th November, 2002 so that the property in question may be taken by the Metro Railway in execution of the work. The claimant appeared on 8th September, 2005 and 4th October, 2005 and filed claim petition which is registered as claim case thereafter exhaustive evidence was taken on 2nd March, 2006. On 19th April, 2006, the claimant filed one petition for joint inspection. It is also noted by the Competent Authority as well as the Appellate Authority that during joint inspection the petitioner Smt. Kalpana Mondal put her signature in the report prepared on 9th November, 2005 with the endorsement as follows *"I signed this Joint Inspection Report subject to compensation to the awarded for the entire land and complete building thereon inter-alia trees etc. as inspected by the representatives of*

the Competent Authority and Metro Railway, Kolkata on 9.11.05". Thus, from the aforesaid aspect, it is palpable that the petitioner has put her signature in the joint inspection report subject to condition that she may receive the compensation. No such objection was raised during joint inspection for releasing of the property. The Competent Authority as well as the Appellate Authority has taken note of the aforesaid aspects while dealing with the ground raised by the petitioner for releasing of her property. Once the petitioner has acceded to receive compensation in respect of entire land and complete building, the plea for release of the property at this stage where the project has proceeded largely is uncalled for. Accordingly, the ground as aforesaid raised by the petitioner does not stand to reason.

8. Other aspect raised is with regard to the assessment of the compensation. It is pertinent to note that the Competent Authority assessed the compensation of Rs. 9,22,285/- which has been enhanced by the Appellate Authority in appeal to the extent of Rs. 11,13,070/-. It is urged on behalf of the petitioner referring to the decision of Appellate Authority passed in another Acquisition Claim Appeal No. 33 of 2006 that the valuation of the property should be considered at Rs. 650/- per sq. ft. The Appellate Authority to have a first hand glimpse had undertaken an official visit to the Mouza-Balia and after discussion with the engineers accompanying him and upon inspection of the building had fixed the rate of assessment of construction at Rs. 500/- per sq. ft. It is a fact that the Appellate Authority in respect of selfsame Mouza-Balia at Plot No. 529 in Acquisition Claim Appeal No. 33 of 2006 has considered the valuation of

plot at Rs.650/- per sq. ft. However, it is pertinent to note that while coming into such conclusion regarding valuation it has considered the nature of construction and other aspects. Therefore, there cannot be any general application of valuation since the nature of the property in both the cases are distinct and different. As the valuation arrived at in the present case by the Appellate Authority is upon physical examination of the plot and the building and taking into consideration all other relevant aspects, the same does not call for interference. Accordingly, the ground taken for enhancement of compensation falls short of merit.

9. In light of the aforesaid discussion, the writ petition being no. **W.P.A. 27591 of 2007** is dismissed.

10. There shall be no order as to costs.

11. All connected applications, if any, stand disposed of.

12. Interim order, if any, stands vacated.

13. 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.)