

JPD-43
Ct No.01
30.07.2024
AK

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Jurisdiction

MAT 56 of 2024
IA No: CAN 1 of 2024
CAN 2 of 2024

The State of West Bengal and others
vs
Sucharita Roy and others

Mr. Sirsanya Bandopadhyay
Ms. Bedashruti Bose

.... for the appellants.

Mr. Milon Bhattacharya
Mr. Dilip Kumar Chatterjee
Mr. Debanjan Das

...for the respondent no.1.

- 1.** Affidavit-of-service filed in court today be kept on record.
- 2.** Affidavit-in-opposition filed by the respondents to the application for condonation of delay is kept on record, although there was no previous direction for filing such affidavit. A copy filed thereof is handed over only here and now to the learned advocate for the appellant/petitioner.
- 3.** Learned senior counsel appearing for the respondents contends that no particulars have been given in the relevant paragraphs of the condonation of delay application and as such the application ought to be dismissed. That apart, although the delay in

preferring the appeal has been mentioned as 56 days, the actual delay in preferring the appeal is 68 days.

4. Heard learned counsel in connection with the application under Section 5 of the Limitation Act. We find from the explanation given in paragraph 15 onwards of the application that the delay was due to jurisdictional changes for subject matter of the High Court at Calcutta, Principal Bench to the Circuit Bench at Jalpaiguri and that the Registrar of the Circuit Bench, Jalpaiguri had intimated that the records were lying with the Principal Bench and should be forwarded to the Circuit Bench to file an appeal. Due to such jurisdictional changes, the condonation of delay has been sought. Upon perusal of the application and the opposition, we are of the view that sufficient cause has been shown in the application for condonation of the delay occasioned in preferring the appeal. Moreover, it is well-settled that a hyper-technical approach is not to be taken while considering such applications.
5. Accordingly CAN/1/2024 is allowed, thereby condoning the delay in preferring the appeal bearing MAT/56/2024.
6. The appeal is taken up for hearing.
7. Learned counsel for the appellants submits that the land of the petitioner was not acquired under the Land Acquisition Act but was offered by one of the

stakeholders in the Accelerated Urban Water Supply Programme of September 1994, under which the local Gram Panchayat offered the land of the petitioner to the appellant authorities for the project-in-question.

- 8.** It is contended by placing reliance on the provisions of the scheme, in particular Clause X thereof, that the pattern of finance was that the accelerated Urban Water Supply Programme being a centrally sponsored scheme, will be funded on grant basis by the Central Government 50% and State Government 50% including 5% beneficiary/town contribution.
- 9.** Learned counsel also places reliance on relevant documents annexed to the stay application, in particular a communication by the Latabari Gram Panchayat dated October 13, 1999, to argue that the land-in-question pertaining to Plot no.355 was offered to the appellant authorities by the Gram Panchayat itself.
- 10.** By placing reliance on the Memo dated June 5, 2002 annexed at page-115 of the stay application, it is argued that the Deputy Secretary of the Government of West Bengal proceeded on the premise that the land was being offered under the scheme-in-question by the concerned Gram Panchayat.
- 11.** It is, thus, submitted that the learned trial Judge, while passing the impugned order, committed a gross illegality in directing compensation to be given by the

State whereas the remedy of the writ petitioner for compensation, if any, lay at best against the concerned Gram Panchayat.

- 12.** It is secondly argued by the appellants that the acquisition never took place under the concerned Land Acquisition Act and as such the learned Single Judge erred in law in applying the modalities of acquisition of land under the Land Acquisition Act in directing compensation to be paid to the writ petitioner.
- 13.** In paragraph no.18 of the impugned order, it was recorded by the learned Single Judge that the writ petitioner is entitled to compensation along with other statutory benefits including solatium, interest, etc. treating it as a case of deemed acquisition.
- 14.** In other words, it was held, the property of the petitioner was deemed to have been acquired by the State and the petitioner is entitled to compensation and other statutory benefits for the same.
- 15.** Learned counsel submits that apart from the fact that the land was never acquired by the State but obtained under the scheme from the Gram Panchayat, fact remains that the writ petitioner made a grossly belated claim for compensation and as such, ought not to have been granted relief by the writ court at all.

- 16.** Learned senior counsel appearing for the private respondent/writ petitioner places reliance on certain documents annexed to the stay application as well.
- 17.** Learned senior counsel points out that by a letter dated February 14, 2012, the Executive Engineer, Jalpaiguri Division of the P.H.E., which admittedly utilized the land-in-question, wrote to the Special Land Acquisition Officer, Jalpaiguri with regard to acquisition of the property.
- 18.** Again, approval for land acquisition for Uttar Latabari was mentioned as the caption of another notice of the same Executive Engineer to the Land Acquisition Collector dated February 6, 2014.
- 19.** Learned senior counsel places reliance on several correspondences annexed to the stay application from the same authority to indicate that initiatives were taken by the authorities themselves for acquisition of the land.
- 20.** As such, it is argued that at this juncture the appellants cannot resile from such position and deny the entitlement of the writ petitioner under the concerned provisions of the Land Acquisition Act.
- 21.** A receipt dated January 3, 2012 was annexed to the writ petition, from which it transpires that it was acknowledged that an application of the requiring body, LAC, for acquisition of land for Uttar Latabari

Water Supply Scheme was issued in favour of the petitioner.

22. Thus, it is submitted that the learned Trial Judge was fully justified in passing the impugned order.

23. Insofar as the argument of delay is concerned, learned senior counsel places reliance on the judgments of the Supreme Court which were relied on by the learned Single Judge in such context.

24. It was observed by the learned Single Judge on the premise of such judgments that delay and laches cannot be raised in a case of continuing cause of action if the circumstances shock the judicial conscience of the court.

25. Condonation of delay, it was held, is a matter of judicial discretion which must be exercised judiciously and reasonably in the facts and circumstances of the case.

26. Upon a careful scrutiny of the materials on record and hearing learned counsel, we are of the opinion that the scope of interference in an intra-court appeal is limited.

27. Seen from such perspective, there was sufficient reason for passing of the impugned order by the learned Single Judge.

28. It might very well have been that the State had obtained the writ petitioner's land pertaining to Plot

no.355 from the local Gram Panchayat under a particular scheme.

29. However, fact also remains that the said scheme did not bind the writ petitioner, the latter not being a party to the same.

30. We further find that the entire correspondence pertaining to the offer of the land by the Gram Panchayat in favour of the State, for the purpose of utilization by the P.H.E., did not find any participation of the writ petitioner at any point of time.

31. As such, the writ petitioner could not have been bound by the said scheme or the modality by which the State obtained the land.

32. That apart, we are of the further opinion that the State, before taking the land, ought to have satisfied itself properly, by analogy of the principle of caveat emptor (although not directly applicable), that the land being offered by the Gram Panchayat actually belonged to it.

33. Although there are certain cursory references to the relevant documents in respect of the land having been furnished by the Gram Panchayat to the State in that regard, there is no mention at all in the documents which are before this court as to there being any attempt on the part of the State or the P.H.E. to satisfy themselves as to the title of the land

before taking the same on the offer of the Gram Panchayat.

- 34.** That apart, the P.H.E. cannot now disown the repeated letters of its own Executive Engineer at the contemporaneous juncture.
- 35.** It is seen from the several correspondences of the relevant time that efforts were made on the part of the P.H.E. to acquire the land.
- 36.** The same is also borne out by the acknowledgment which the petitioner annexed to the writ petition.
- 37.** Thus, although there is no concept in law of 'deemed' acquisition, we are of the opinion that the learned Single Judge was perfectly within jurisdiction in premising the modality of assessing compensation on the parameters of land acquisition, since the appropriate course of action for the State was to adopt the modalities as enumerated under the Land Acquisition Act for the purpose of acquiring the property of the petitioner.
- 38.** Having not done so, the parameters and yardsticks of the Land Acquisition Act are the only guidelines which can be applied for assessing the compensation payable to the writ petitioner.
- 39.** In such view of the matter, we are of the opinion that although on the given factual scenario an alternative view in favour of the appellants might have been possible, the view taken by the writ court was

also one of the plausible views and we cannot upset such views and substitute our opinion in place of the same in an intra-court appeal.

40. In such view of the matter, we are not inclined to interfere with the impugned order.

41. Accordingly, MAT 56 of 2024 along with CAN 2 of 2024 are dismissed without any order as to costs.

42. It is made clear, however, that nothing in this order and/or the order of the learned Single Judge shall preclude the appellants herein from taking out appropriate proceedings against the concerned Gram Panchayat for recovery of the money which the appellants shall pay to the writ petitioner in the event the appellants can establish that they have a right in law to do so, unfettered by any of the observations made above.

43. Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance with all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

(Prasenjit Biswas, J.)