

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APO/43/2024
with
WPO/1531/2023
IA NO:GA/1/2024

THE KOLKATA MUNICIPAL CORPORATION
Vs.
ADITYA ALMAL AND ANR.

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
AND
The Hon'ble JUSTICE PRASENJIT BISWAS
Date : APRIL 25, 2024.

Appearance:

Mr. Alak Kr. Ghosh, Advocate
Mr. Swapan Kumar Debnath, Advocate
....for appellant/ KMC.

Mr. Arijit Bardhan, Advocate (VC)
Mr. Soumyajit Mishra, Advocate
Mr. Rishabh Dutta Gupta, Advocate
..for respondents/ writ petitioners

Ms. Noelle Banerjee, Adv.
Mr. Ovik Sengupta, Adv.
For State.

The Court:- A judgement and order dated February 1, 2024, whereby a learned Judge of this Court rejected an application filed by Kolkata Municipal Corporation (in short 'KMC') being GA/1/2023, for being impleaded as a party respondent to the writ petition filed by the

respondent nos. 1 and 2 herein being WPO/1531/2023, is under challenge in this appeal at the instance of KMC.

It is not in dispute that portions of premises no.2, Garstin Place, Kolkata – 700 001, belonging to the respondents/writ petitioners herein, were requisitioned under the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 (in short, “1947 Act”). The owners approached this Court by filing AP/97/2002, for appointment of an Arbitrator to determine the rent compensation in respect of the concerned premises as contemplated under Section 11 of the 1947 Act. Such application was disposed of by a learned Judge of this Court by an order dated July 5, 2002, whereby, by consent of the parties, learned District Judge of North 24 Parganas, was appointed as the Arbitrator.

The Arbitrator, so appointed, made an award dated April 18, 2007, for a total sum of Rs.41,18,380/- and further interest @ 9% per annum for the period the amount remained unpaid after 60 days from the date of the award. The rent compensation so assessed by the Arbitrator was for the period from the date of requisition of the concerned premises till July 27, 1989.

Thereafter, there was an attempt by the State to acquire the premises under the provisions of the Land Acquisition Act, 1894 (in short, “1894 Act”). Notification under Section 4(1) was issued.

Declaration under Section 6 of the 1894 Act was also published. However, the process of acquisition was not carried to its logical conclusion. The acquisition proceedings lapsed.

Sometime in the year 2017, the owners of the concerned premises approached a learned Judge of this Court by filing WP/61/2017. The writ petitioners therein contended that the acquisition proceedings having lapsed, the possession of the concerned premises should be returned to them and rent compensation should be paid to them for the period that State was in occupation of the concerned premises. Prayers (a) and (b) of the said writ petition read as follows:

- a) *A Writ or Writs, Order or Orders, direction or directions of or in the nature of Mandamus commending and directing the respondent authorities and in particular the First Land Acquisition Collector, the respondent no. 2, to forthwith make over possession of the portions of Premises No. 2, Garstin Place, Police Station – Hare Street, Kolkata – 700 001, more fully described in paragraphs nos. 4, 5 and 6 supra, within such a time bound frame as to Your Lordships may seem fit and proper;*
- b) *A Writ or Writs, Order or Orders, direction or directions of or in the nature of Mandamus commanding and directing the respondent authorities and in particular the First Land Acquisition Collector, the respondent no. 2 abovenamed, to pay to the petitioners, such sum, as would be assessed, in the manner and at the rate indicated in paragraph 28 hereinabove appearing, on account of mesne profits, for the period*

commencing from July 27, 1989 till such time vacant possession of the said portions of the said premises are made over to the petitioners, within such a time bound frame as to Your Lordships may seem fit and proper, in the facts and circumstances of the case.”

The said petition was disposed of by a learned Judge of this Court by a judgement and order dated August 10, 2018. The operative portion of the said order reads as follows:

“This Court, therefore, directs the State Government to take steps relating to the revision of the compensation for the period from the midnight of 31st March, 1992 till the property is acquired or in the event no acquisition proceeding is initiated, the same is physically and actually delivered to the petitioners. The entire exercise shall be undertaken by the State within 8 weeks from the date of communication of this order.”

Alleging that the State did not carry out the aforesaid order, the owners of the concerned premises filed a contempt application for alleged violation of the judgement and order dated August 10, 2018, being CC/57/2019. The Land Acquisition Collector and the Municipal Commissioner were the respondents in the contempt application. In that application, an affidavit was filed on behalf of the Land Acquisition Collector/State, disclosing that assessment of rent compensation had

been made for the period indicated by the learned Judge in the judgement and order dated August 10, 2018, i.e., for the period from April 1, 1992 till the date of handing over of possession of the concerned premises by the State to the owners thereof, i.e., January 13, 2023. It may be noted that initially, the assessment of rent compensation was made for the period from April 1, 1992 till March, 2019. Thereafter, further assessment was made for the period from April, 2019 till January 12, 2023. For the period till March 31, 2019, rent compensation was assessed at Rs.2,96,43,817/- and for the period from April, 2019 till the date when possession was handed over, the rent compensation was assessed at Rs.76,33,754/-. The owners of the concerned premises being the respondent nos. 1 and 2 herein, recorded their dissatisfaction with the amounts of rent compensation assessed by the Land Acquisition Collector for the aforesaid two periods. However, the State offered to pay the amounts, which the private-respondents herein accepted without prejudice to their rights and contentions. This will appear from letters dated March 31, 2023 and May 10, 2023, written by the constituted attorney of the private-respondents herein to the Additional Land Acquisition Collector, Kolkata.

In the aforesaid factual background, the respondent nos. 1 and 2 herein have approached the learned single Judge by filing WPO/1531/2023, primarily with the following prayer:

“a) A Writ of or in the nature of Mandamus by commanding and directing the respondents and in particular the respondent no.1 to appoint an Arbitrator, in terms of Section 11 of the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947, to determine the amount of compensation to be awarded to the petitioners, for the period commencing from the midnight of March 31, 1992 till January 13, 2023, i.e. to say the date when the requisitioned property was physically and actually delivered to the petitioners, within such a time bound period as to this Hon’ble Court may seem fit and proper in the facts and circumstances of the case.”

The party respondents in the writ petition are the First Land Acquisition Collector and the State of West Bengal, service through the Secretary, Department of Land & Land Reforms and Refugee and Rehabilitation.

Coming to know of the aforesaid writ petition, which is presently pending before the learned single Judge, KMC made an application being GA/1/2023, for being impleaded as a party respondent to the writ petition. The contention of KMC was and is before us also that if the writ petition is allowed and an Arbitrator is appointed and such Arbitrator passes an award, the financial burden will ultimately fall on Kolkata Municipal Corporation, as the requiring authority. Hence, KMC is a necessary or at least a proper party to the writ petition and it should be heard before the writ petition is disposed of.

Learned advocate for the writ petitioners placed a decision of the Hon'ble Supreme Court before the learned single Judge reported at (2010) 14 SCC 285 (West Bengal State Warehousing Corporation vs. Indrapuri Studio Private Limited & Another). In that case, in the context of Section 11 of the 1947 Act, the Hon'ble Supreme Court held as follows:

“13. At the commencement of the proceedings before the arbitrator, the State Government and the person entitled to receive compensation are required to state their respective opinions as to the fair amount of compensation [Section 11(1)(d)]. Thereafter, the arbitrator has to determine the amount of compensation keeping in view the matters enumerated in clauses (a), (b) and (c) of Section 12. Once the award is made and signed, the arbitrator has to inform the parties to the reference by sending a notice in writing and also send copies of

the award to the Collector and the person or persons interested (Rule 13).

14. What is most significant to note is that neither at the stage of fixing the amount of compensation by agreement nor at the time of appointment of arbitrator, the State Government is required to consult any person including beneficiary of the requisition. The only person with whom the State Government is required to negotiate the amount of compensation is the one whose premises are requisitioned. An application for reference of the case to the arbitrator can be made only by a person who was a party to the unsuccessful exercise undertaken for fixing the amount of compensation by agreement. If the State Government nominates a person having expert knowledge as to the nature of the requisitioned premises to assist the arbitrator, a corresponding right is available to the person whose premises are requisitioned to nominate an assessor.

15. In terms of Section 11(1)(d), only the State Government and the person to be compensated have the right to state their respective opinions as to the fair amount of compensation. The person to whom the requisitioned premises are transferred has no role in any one of these matters. The use of expression "the person to be compensated" in clauses (c) and (d) of Section 11(1) clinches the issue. A person like the appellant certainly does not fall in the category of the person to be compensated.

16. As a sequel to the above, it must be held that a person for whose benefit the premises are requisitioned or to whom the requisitioned premises are transferred does not have any locus to participate in the process of determination of compensation

by agreement, or in the matter of appointment of an arbitrator or reference of case to the arbitrator or nomination of an assessor. A person like the appellant can neither submit opinion under Section 11(1)(d) as to the fair amount of compensation nor the arbitrator is obliged to give notice and opportunity of hearing to such person under Section 11(1)(e) read with Sections 12(a), (b) or (c). Therefore, such person is neither entitled to copy of the award as of right nor can he challenge the award by filing an appeal under Section 11(1)(f) and the High Court did not commit any error by declaring that the appeal filed by the appellant was not maintainable.”

Since the prayer in the writ application, as framed, is relatable to Section 11 of the 1947 Act, the learned Judge concluded that KMC as the beneficiary of the requisition has no locus standi to participate in the hearing of the writ petition. It is neither a necessary nor a proper party to the writ petition. The learned Judge dismissed the application made by KMC for being impleaded as a party respondent to the writ petition.

Hence, this appeal at the instance of KMC.

Appearing for Kolkata Municipal Corporation, Mr. Alak Kumar Ghosh, learned senior counsel, submitted that the writ petition is not maintainable. The prayer made in terms of Section 11 of the 1947 Act, cannot be allowed or even be considered by the learned single Judge who is *in seisin* of the writ petition. This is because, pursuant to the order of Hon’ble Justice Harish Tandon passed on August 10, 2018, the Land

Acquisition Collector has already assessed the rent compensation payable to the writ petitioners herein for the entire period starting from April 1, 1992 till January 12, 2023. Therefore, there can be no further determination of rent compensation for the aforesaid period. Hence, the prayer for appointment of an Arbitrator in terms of Section 11 of the 1947 Act, is not maintainable in law.

Mr. Ghosh submitted that if at all, the writ petitioners may approach the appropriate authority for revision of the rent compensation as contemplated under Section 14A of the 1947 Act. If they do so, KMC would have the right to be heard. The Supreme Court decision referred to above will not stand in the way in that case because in that decision Section 14A of the 1947 Act did not fall for consideration.

Ms. Noelle Banerjee, learned advocate appearing for the State, says that the State is contesting the writ application which has been filed by the respondent nos. 1 and 2 herein. It is the stand of the State that the writ application is not maintainable. In effect, the State takes the same stand as has been taken by KMC.

Mr. Arijit Bardhan, learned advocate appearing for the respondents/writ petitioners, pointed out that the earlier Section 11 proceedings pertained to only the period from the date of requisition till July 27, 1989. For the subsequent period, there has been no

assessment of rent compensation strictly in terms of Section 11 of the 1947 Act. Learned advocate submitted that the exercise undertaken by the Land Acquisition Collector for determining the rent compensation for the period starting from April 1, 1992 till January 12, 2023, was in effect in terms of Section 11 of the 1947 Act. However, such assessment not being acceptable to the present writ petitioners, the rent compensation could not be fixed by agreement of the parties as contemplated in Section 11 of the 1947 Act. Therefore, it has become necessary to appoint an Arbitrator in terms of the provisions of the said Section for determining the rent compensation payable to the present writ petitioners for the period indicated above.

We have given our anxious consideration to the rival contentions of the parties.

The prayer in the writ application as framed by the respondent nos.1 and 2 herein appears to be under or relatable to Section 11 of the 1947 Act. KMC says that no further application under Section 11 of the 1947 Act will be maintainable for the reasons that we have recorded above. The State also says the same thing. Since as the writ petition stands today appears to be under Section 11 of the 1947 Act, the decision of the Hon'ble Supreme Court in the case of West Bengal State Warehousing Corporation (supra) would squarely seem to apply.

Therefore, we cannot say that the learned single Judge committed an error in dismissing KMC's application for impleadment, relying on the aforesaid judgment of the Hon'ble Supreme Court.

However, since the question of maintainability of the writ petition has been raised by KMC and the State as well, in our view, the learned Judge should decide that question prior to deciding the writ petition on merits. Naturally, the State will be at liberty to urge all points as may be available to it before the learned single Judge. We express no opinion on the maintainability or otherwise of the writ petition.

In the event, KMC is aggrieved by the final order passed by the learned single Judge disposing of the writ petition, it will be at liberty to challenge the same, in accordance with law, if it is entitled to do so in law.

The appeal and the connected applications are disposed of.

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

(ARIJIT BANERJEE, J.)

(PRASENJIT BISWAS, J.)