

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present: - Hon'ble Mr. Justice Subhendu Samanta.

IN THE MATTER OF
WPA 3457 of 2019
with
IA No.:CAN/1/2020 (Old No.:CAN/3850/2020)
with
CAN/2/2021

Gopal Jhunhunwala & Ors.
Vs.
State of West Bengal & Ors.

For the Petitioner : **Mr. Saptansu Basu, Sr. Adv.,**
Mr. Pradip Sancheti, Adv.
Mr. Subhankar Nag, Adv.
Mr. Biswajit Chowdhury Adv.

For the State : **Mr. Chandi Charan De, Adv.,**
Mr. Soumitra Bandyopadyay, Adv.,
Mr. Anirban Sarkar, Adv.,
Mr. Subhasis Bandyopadhyay Adv.

For the KMDA : **Mr. Satyajit Talukder, Adv.,**
Mr. Arindam Chatterjee Adv.

Reserved on : **14.07.2025**

Judgment on : **11.09.2025**

Subhendu Samanta, J.

1. Instant writ petition has been filed seeking mandamus upon the respondents authorities to comply with an order dated 16th July, 2018 passed

by a Co-ordinate Bench of this court in WP No. 6330 (W) of 2018 **(Gopal Jhunjhunwala) and Ors Vs. State of West Bengal)**

2. To properly understand the issues involved herein operative portion of the order of Co-ordinate Bench dated 16th July, 2018 set out herein.

On the basis of undisputed fact, there is no doubt in my mind that an individual has been deprived of this property without recourse to law and to undone such unconstitutional act, the property is required to be reverted back to the owner. But this court cannot overlook the fact that such property was required and utilized for larger public purposes and for construction of a connector facilitating the citizenry of the city to have smooth and more convenient journey from different parts of the city.

This court finds that the possession of the land of the petitioner cannot be given to him as the situation which is prevalent at present, renders it irreversible. Since the KMDA as requisitioning body have been informed to make a fresh proposal, this court permits the KMDA to make a fresh proposal within four weeks from date strictly in terms of the extant Rules/Guidelines or Act applicable in this regard.

The State is directed to take recourse to acquisition of the property as per the extant guidelines and it goes without saying that the entire exercise shall be completed within eight weeks from the date of the receipt of the fresh proposal from the KMDA

" Though this court finds that this direction has been passed to mitigate the situation and to secure the ends of justice yet this court cannot brush aside that the petitioner has been deprived of his property without the payment of a single farthing.

The Land Acquisition Collector, South 24- Parganas is directed to determine the rent compensation from the date of the possession till the date of an acquisition of right, title and interest by the State and shall pay the same to the petitioner along with an interest of 6% per annum. The said Land Acquisition Collector shall complete the entire exercise within eight weeks from the date of communication of this order.

With this observation, the writ-petition is disposed of. No order as to costs.

The personal appearance of the Additional District Magistrate, South 24-Parganas, who is present in court today in compliance with the order dated June 28, 2018, is dispensed with.

Urgent Photostat Certified copy of this order, be given to the parties, if applied for, on priority basis.

3. In terms of above mentioned direction of this court Calcutta Metropolitan Development Authority being respondent No. 2 and 3 of instant writ petition make a fresh proposal to the State Government vide their communication dated 7/9/2018 for requisition of the land in question admeasuring 0.31 acres (as per joint survey of CS Dag No. 236 dated 10/8/2018). On the basis of the said proposal, the Government of West Bengal being respondent No. 1,4,5 and 6 adopted a policy of direct purchase vide notification No. 756-LP.1A-03/14(PT)(ii) dated 25/02/2016 by

such, concerned Department of Government of West Bengal has calculated the marker value of the land as per direct purchase policy amounting to Rs 7,51,01,734.50/- (seven crores fifty one lacs one thousand seven hundred thirty five only). Government of West Bengal has conveyed the proposal to the petitioner through an offer letter dated 04.01.2019 but the said offer was rejected by the petitioner.

4. In terms of the said direction of this court the State of West Bengal has also calculated rent compensation of Rs.76,100/-for a period from 01.01.1980 to 15.09.2018 with an interest @ 6% per annum. The total rent compensation was calculated to Rs 3,02,627/- only. The state has requested the petitioner to receive the same but the petitioner has not accepted it.
5. Mr. Saptansu Basu, Learned Senior Counsel appearing on behalf of the petitioner submits that the respondent authorities has deliberately not followed the direction of Co-ordinate Bench of this court passed in WP No. 6330 (W) of 2018.

6. Mr. Basu submits that the State of West Bengal has adopted a policy of direct purchase to fix the compensation of the land in question. The policy of direct purchase is not applicable herein.
7. He further submits that the Hon'ble Co-ordinate has clearly indicated in the order itself to pay compensation to the petitioner. The direct purchase policy, as adopted by the State is not within the direction of the Co-ordinate Bench of this court. He submits that the value of land, as assessed by the State is de hors to the direction of this court. Thus the respondents may be directed to initiate the process of acquisition according to the provisions of Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Re-settlement Act, 2013.
8. Mr. Basu further submits that the rent compensation which was calculated by the State is very migure one. Thus the same cannot be accepted. Mr. Basu further argued that this court as well as the Hon'ble Supreme Court time and again observed that when State

Government without following any regular process of acquisition has illegally possessed land of a citizen, apart from regular process of acquisition, State must give rent compensation of that land for the period when State was under actual physical possession of that land along with payment of damages. Mr. Basu, referred an observation of this court passed by Co-ordinate Bench in WP 12043 (w) of 2013 dated 18.09.2015 wherein a Co-ordinate Bench of this court has held that **“this is very unfortunate case where I find that an organ of welfare State is occupying the citizens property as trespasser as such I feel that for such unauthorised occupation of petitioner’s land, the State respondent is liable to pay damages which will be no less than 10 times of letting value of the State land of the petitioner”**

9. Mr. Basu submits that the petitioner has deprived of actual compensation, so necessary direction may be passed upon the respondent authority.
10. Mr. Satyajit Talukdar, learned Counsel appearing on behalf of the KMDA submits that in terms of the

direction of this court, the KMDA Authority has made a fresh proposal for requisition of the land in question on 7th September, 2018. Thus the KMDA has properly followed the order of the Co-ordinate Bench.

11. Mr. Chandicharan Dey, Learned AGP appearing on behalf of the State submits that the State of West Bengal has properly followed the direction of this court. Rent compensation was calculated in terms of necessary guideline of the State of West Bengal thus such rent compensation cannot be said to be migure or illegal one.
12. He further submits that if the petitioner is aggrieved about the calculation of rent compensation he may approach appropriate forum for desire relief. During the course of argument Mr. Dey has placed calculation-sheet prepared by the Concerned Department of Collector, South 24 Parganas.
13. Mr. Dey further submits that the Co-ordinate Bench of this court while passing the order on 16th July, 2018 was conscious about the fact that no rules for the acquisition of land was prepared under Act 2013,

thus it has been directed by the Co-ordinate Bench that the State to take recourse for acquisition of the property as per prevalent guideline.

14. Mr. Dey put emphasis upon the term “Prevalent Guideline” and submits that Government of West Bengal in absence of any rule of acquisition of land under the new Act of 2013 could not apply for new acquisition cases in West Bengal and as an alternative method the State Government has adopted a policy of direct purchase. He submits that the policy of direct purchase is very much applicable in the State of West Bengal; by dint of said direct purchase policy, as State has correctly assessed the land value. Mr. Dey further submits that the petitioner did not accept the offer of the State and only appear before this court to get more money.
15. Having heard the Learned Counsel for the parties also considering the issue involved herein it appears to me that it is admitted by parties that land of the petitioner was used and utilised of Calcutta Metropolitan Development Authority for construction of **Prince Anwar Shah Road Connector** way back in

the year 1980. The Co-ordinate Bench of this court has directed the KMDA to make a fresh proposal for requisition of the land. State was directed to take recourse to acquisition of the property as per extent guideline or Act applicable in this regard. The land acquisition Collector, South 24 Parganas was directed to determine rent compensation from the possession till the date of acquisition of right title and interest of the State and shall pay the same to the petitioner along with interest of 6% per annum.

16. On plain perusal of the order, the direction of Co-ordinate Bench of this Court may be summarised as follows:

1. KMDA shall make a fresh proposal of requisition of the land in question in terms of extent rule guidelines or Act applicable in this regard.
2. State to take recourse to acquisition of the property as per extent guideline after receipt of fresh proposal from KMDA.
3. Land Acquisition Collector South 24 Parganas to determine rent compensation from the date of possession till the date of acquisition.

17. Let me consider one after another whether of the direction of this court was properly followed by the State or the Authorities.
18. In considering the first direction of the Co-ordinate Bench it appears that the KMDA authority has issued a fresh proposal to the Concerned Collector on 7th September, 2018 regarding requisition of land in question admeasuring 0.31 acres. It is their contention that through joint survey, they found that actually 0.31 acres of land out of 0.41 acres of said CS Plot have been utilised by the KMDA in connection with construction of Prince Anwar Shah Road Connector. In earlier writ petition before the Co-ordinate Bench KMDA admitted they required the land admeasuring 0.365 acres of the said CS Plot for construction of the said connector. Now, in the name of joint survey, by the KMDA officials and the officials of State Land Acquisition officer, South 24 Parganas, they formed a report that actually 0.31 acres of land was utilise. I make it clear that the petitioner was not informed of present at the time of the joint survey. The petitioner had no scope to raise

any objection or to consent justification to the survey conducted by the concerned authorities.

19. I make it clear that the requisition of land in question should have include, the land actually utilised and also the land, though not utilised but put the land in such a position that it cannot be used by the petitioner further due to the reason of construction of the connector. Thus, it appears that the so called compliance of the KMDA in terms of the direction of the Co-ordinate bench is not proper. On that score the KMDA and the State respondent authority shall make joint survey in presence of the petitioner to assess true area of land require to be acquired. Thus, in my view the compliance of Calcutta KMDA in terms of the direction of this court is not acceptable.
20. In considering the second compliance it appears that State Government has adopted policy of director purchase to assess the land value of the petitioner. In terms of direction of this court, state has directed to take recourse of the acquisition of the property as per extent guidelines. It is the contention of the State

authority that for true compliance of the order, as no rule has not been framed in terms of new Act 13, they have adopted the direct land purchase policy. It is the further contention of the State Authority that they have followed guideline. Concerned Co-ordinate Bench was aware about the fact that rules were not framed at the time.

21. This court cannot accept the view of the Learned AGP in this matter. When it is admitted that land of a citizen was utilised by the instrumentality of the State since 1980, without following proper acquisition process, the same land after so many years of use cannot take recourse to purchase the said land under direct purchase policy. Moreover, if we read clearly the policy of the Government notification it would be construed otherwise Land Purchase Policy of West Bengal vide its memorandum dated 25th February, 2016 which is read as follows:

MEMORANDUM

No. 756-LP/IA-03/14(P1-II)

Date: 25.02.2016

It has been observed that often important infrastructure projects like food godowns, roads, bridges etc. we are not fully commissioned for want of small parcels of land. To ensure the optimal utilization of public funds and early implementation of such projects, direct land purchase from land owners may become necessary.

2) The State Government has considered the immediate need of land for such projects.

From the above mentioned memo it appears that when it appears to the State that State has immediate requirement of a land for public purpose and there is not time to intimate proper way of acquisition, on that occasion State can adopt land purchase policy. In the preset case the land in question has already been utilised by the state. Thus the said law cannot be purchased after so many years of utilisation of such land. In my view that it has been specifically admitted/not denied by State that property of a citizen was utilised by State instrumentalities without taking recourse of proper acquisition, thus, the said land cannot be purchased

but it should be acquired in terms of the relevant Act applicable in this regard. Moreover, a welfare state shall not interpret a direction of a court in their favours and whims to deprive a citizen but to compensate him proper and adequately, according to law. In the present case in my view value of the land assessed by the state respondent authority by dint of direct purchase policy appears to be improper and illegal. State is directed initiate the proceeding of acquisition of the land under Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013.

22. In considering third direction of the Co-ordinate Bench of this court, it appears that the concerned authority has placed a report before this court regarding the assessment of land revenue from the date of possession of the land till the date of acquisition. Though it has been argued by the petitioner that the petitioner is required to pay damages for unauthorised utilisation of the land of the petitioner by the State authority but, it appears from the direction of the Co-ordinate Bench that

land acquisition Collector, south 24 Parganas was directed to determine the land compensation from the date of possession till date of acquisition along with an interest @ of 6% per annum. The Coordinate Bench has not allowed any damages in favour of the petitioner. Thus the claim of the petitioner regarding damages upon the rent compensation cannot be accepted. However, as this court has already observed that the action of State evaluating the land of the petitioner through direct purchase policy is irregular and illegal, thus, the concern land acquisition Collector has to assess the rent compensation afresh.

23. Under the above observation writ petition succeeds.
24. The KMDA shall conduct joint survey in presence of the petitioner in respect of plot in question measuring such area, according to the direction of this court and conclude the exercise within three weeks from the date of communication of this order and shall make a fresh proposal for requisition of the land to the Government within 02 weeks from the date of completion of the joint survey.

25. On receiving such proposal the concern State Authority shall initiate proceeding of acquisition under the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013, and conclude the proceeding upon payment of adequate compensation to the petitioner in terms of the said Act within a period of three months from the date of receiving of the proposal.
26. I make it clear that the concerned State Authority shall afford a reasonable opportunity of being heard to the petitioner according to law.
27. The land acquisition Collector South 24 Parganas, is directed to determine the rent compensation according to the specific guideline from the date of possession till the date of acquisition of right title and interest of the State and shall pay the same to the petitioner along with 6% interest per annum. The said determination of rent compensation should be made within 04 weeks from the date of completion of acquisition.

28. Under the above observation the instant writ is disposed of. Connected applications if pending are also disposed of.
29. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)