

Ab

Vs.

... for the State respondents.

In connection with the proceeding, a large chunk of land was issued including the plot of land bearing no. 128 and

a portion of the plot no. 127 of Mouza – Sankrailjala, P.S. Sankrail, District Howrah. The land bearing no. 128 belonged to the petitioner's father whereas a portion of land comprising plot no. 127 belonged to the petitioner.

However, challenging the legality of the said acquisition proceeding, one writ petition being WP 15238(W) of 2004 was moved by the petitioner before this Hon'ble Court. Record reveals that a coordinate Bench of this Court by an order dated 15th October 2004 directed the parties thereto to maintain status quo. However, eventually, the aforesaid writ petition was dismissed for default. Subsequently, the petitioner has approached this Hon'ble Court by filing this writ petition.

Record further reveals that upon arriving at a conclusion that the writ petition should be decided after exchange of affidavits, this Court invited affidavit from the respondents and, accordingly, the respondent no. 5 has filed affidavit-in-opposition and the petitioner has filed reply to that affidavit-in-opposition.

Mr. Dey, learned advocate appearing on behalf of the petitioner, submits that the land has not been utilized as yet and no compensation has been paid to the petitioner. According to him, for these reasons, the acquisition proceeding has lapsed and as such, currently, the respondents have got no other choice but to release the land in his favour or to award compensation in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act of 2013.

Mr. Tarak Karan, learned Advocate appearing on behalf of the State, drawing certain paragraphs from the affidavit-in-opposition used by the respondent no. 5 and certain documents appended thereto, argues that following the procedure in accordance with the applicable law, the award was declared and compensations have been paid to all persons interested in the land acquired under the proceeding. However, the petitioner did not collect the proportionate share of the compensation in respect of plot no. 127. Subsequently, due to such interim order passed in WP 15238(W) of 2004, the payment of proportionate share of the award to the petitioner was put on hold. He submits that as the WP 15238(W) of 2004 has been dismissed and there is no lid over the payment of award in favour of the petitioner, the petitioner is at liberty to collect the award from the office of the District Collector.

Undeniably, the proceeding was initiated by invoking relevant provisions of the Act II of 1948. The acquisition notice was also issued under Section 3(1A) of the said Act and, subsequently, a notice under Section 4(1a) of the Act was also issued and from the schedule of the notice appears that a certain portion of land in plot no. 127 and the entire portion of plot no. 128 was acquired in connection with the said acquisition proceeding.

However, the proceeding was lapsed and, subsequently, by invoking Section 9(3B) of the Land Acquisition Act-I of 1894 as amended by the Land Acquisition (West Bengal Amendment) Act, 1997, the proceeding was

revived and, following the prescribed procedure and due process of law, the award was declared under Section 11 of the Act-II of 1948, which would be evident from Annexure – R4 to the affidavit-in-opposition.

The petitioner did not accept the proportionate share of the compensation. Instead, he challenged the legality of the entire proceeding by preferring a writ petition being WP 15238(W) of 2004. However, as noticed earlier that the said writ petition was subsequently dismissed for default by an order dated 18th March 2015. Therefore, as the award was declared in accordance with the applicable law and the compensation was paid to the persons interested of the lands acquired under the said proceeding, I am not impressed to accept the petitioner's contention that the proceeding has been lapsed. An acquisition proceeding cannot be claimed to have lapsed since an owner or co-owner of a plot of land did not accept the compensation.

Therefore, as the award was declared and duly published in accordance with the Act-I of 1894 and the persons interested of the land received the compensation, the lands that were acquired under the proceeding have absolutely vested to the State as per Section 16 of the Act-I of 1948. Therefore, there cannot be any question of release of such land in favour of the petitioner and since the land acquisition proceeding was concluded by declaring award and making payment of compensation, there cannot be any question to pass an order, directing the respondents to pay compensation to the petitioner in accordance with the 2013

Act.

In view thereof, I am of the view that the petitioner's contentions lack merit. Accordingly, the writ petition is dismissed. However, there shall be no order as to the costs.

However, this order shall not preclude the petitioner from collecting the award, which is still lying with the District Collector concerned.

(Partha Sarathi Chatterjee, J.)