

(2022) 05 CAL CK 0066

In the Calcutta High Court

Case No : M.A.T. No. 202 Of 2022, I.A. No. C.A.N. 1 Of 2022

Ajet Ali Baidya Alias Ajet Baidya And Others

APPELLANT

Vs

State Of West Bengal And Others

RESPONDENT

Date of Decision : 20-05-2022

Acts Referred:

Constitution Of India, 1950 — Article 31, 136, 142, 300A
Land Acquisition Act, 1894 — Section 3(b), 11A, 12(2), 18
Land Acquisition (West Bengal Amendment) Act, 1997 — Section 9(3A)
West Bengal Land (Requisition and Acquisition) Act, 1948 — Section 3(1), 4(1a)
Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 24(2)

Citation : (2022) 05 CAL CK 0066

Hon'ble Judges : Arijit Banerjee, J;Kausik Chanda, J

Bench : Division Bench

Advocate : Siddhartha Ruj, Lalit Mohan Mahata, Prasanta Behari Mahata

Final Decision : Disposed Of

Judgement

Kausik Chanda, J

1. This appeal is arising out of an order dated December 22, 2021, whereby a learned Single Judge has dismissed the writ petition.
2. In the writ petition, the writ petitioners prayed, inter alia, for a declaration that the Land Acquisition Case No.4/34 of 1999-2000 stood lapsed and prayed for a direction to put the petitioners in possession of their respective plots of land. In the alternative, it was prayed that the respondents be directed to acquire the petitioners' land and to pay compensation in terms of the "present Land Acquisition Act."
3. The petitioners made out a case that they were settled with different plots of vested land by the State of West Bengal. The petitioners alleged that the said lands of the petitioners along with other contiguous plots were acquired by the State under the Land Acquisition Act, 1894. The petitioners claimed that though

they were "Raiyats", no award was published in their name and no compensation was paid to them.

4. The writ petition was dismissed by an order dated July 4, 2016, by a learned Single Judge of this Court observing, inter alia, that such dismissal will not cause prejudice to the rights of the petitioners in pursuing their respective claims in accordance with law before the appropriate forum.

5. The writ petitioners challenged the said order before a Division Bench by preferring an appeal being M.A.T. 1368 of 2016, which was disposed of on November 2, 2017.

6. The operative part of the said order dated November 2, 2017, is quoted below:

"Section 18 of the Land Acquisition Act, 1894 provides for such a reference at the instance of any person interested who has not accepted the award. Such interested person may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

"Person interested" has been defined in Section 3(b) of the Land Acquisition Act, 1894 which runs as follows:-

"Section 3(b) – the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land."

In view of the said definition clause, we have no hesitation to hold that the writ petitioners/appellants being persons interested can apply for such a reference under Section 18 of the Land Acquisition Act, 1894. However, since the time limit for seeking such reference before the Collector has already expired, we, by relaxing such time limit, permit the writ petitioners/appellants to submit such an application before the concerned Collector within four weeks from date and in the event, such an application is submitted by the writ petitioners/appellants before the concerned authority within the time as fixed above, the concerned authority will consider the same in accordance with law within four weeks from date."

7. The writ petitioners, thereafter, sought a review of the said order by filing a review application being R.V.W. 272 of 2017.

8. The said review application was disposed of by an order dated September 25, 2019, directing the writ petition to be heard again to examine afresh as to whether the Land Acquisition Case No.4/34 of 1999-2000 stood lapsed.

9. It was observed in the said review order dated September 25, 2019, as follows:

"...

7. We find from the order passed by the learned Single Judge as well as the order passed by the coordinate Bench under review that there has been no determination in respect of prayer "a" quoted supra seeking declaration that Land Acquisition Case being L.A. 4/34 of 1999-2000 stood lapsed.

8. Mr. Mahata, learned advocate for the respondents concedes that it is only the High Court that can grant the declaration as prayed for if an appropriate case is set up therefor and that such a declaration cannot be had from the forum under section 18.

9. The basic question raised by the petitioners with regard to validity of the proceedings not having been addressed by the learned Single Judge as well as the coordinate Bench, we are of the considered opinion that the petitioners have set up sufficient ground for review of the order dated 2nd November, 2017. ..."

10. The learned Single Judge recorded the contention of the writ petitioners to the effect that they acquired right, title, and interest over the plots in question by virtue of settlement deeds executed by the Government of West Bengal in their favour on April 25, 1984. The lands in question were acquired in Land Acquisition Case No.4/34 of 1999-2000 for the purpose of construction of a leather complex though the possession of the land was taken in the year 1993. The petitioners were not served with any notice under Section 9(3A) of the Land Acquisition (West Bengal Amendment) Act, 1997 or Section 12(2) of the Land Acquisition Act, 1894, and no compensation was also paid to them. The Land Acquisition Case No.4/34 of 1999-2000, therefore, stood lapsed in view of Section 11A of the Act of 1894. The petitioners, therefore, are entitled to be compensated at the present market value of the land in terms of the extant land acquisition Act being Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

11. The State filed a report in the form of an affidavit before the learned Single Judge.

12. The said report suggests that the land was initially for the purpose of establishment of Calcutta Leather Complex and a notice of requisition under Section 3(1) of the West Bengal Land (Requisition and Acquisition) Act, 1948 was issued on November 17, 1993. The possession of the land was also taken and made over to the requiring body on November 26, 1993. After the issuance of notice under Section 3(1) of the West Bengal Land (Requisition and Acquisition) Act, 1948, a further notice was issued under Section 4 (1a) of the said Act to acquire the said land. The said proceedings, however, could not be completed in view of a writ petition filed by one Ziad Ali Molla. Subsequently, the present Land Acquisition Case No.4/34 of 1999-2000 was initiated and a notice under Section 9(3A) of the Land Acquisition (West Bengal Amendment) Act, 1997 was issued on August 12, 1999, following which enquiry under Section 9 (3A) of the said Act was conducted locally on 21st, 22nd, and 29th September, and 24th, 26th, and

29th November 1999.

13. Thereafter, the award was published and payment was made to the awardees in the month of January 2001, except the serial nos. 66, 67, and 70 of the award. The State has, further, disclosed in the affidavit that some interested persons raised objections with regard to the compensation and as such, the compensation money, amounting to Rs. 5,03,981.14/-, was not paid and deposited in the Court of learned Land Acquisition Judge, Alipore on March 10, 2006. The rest of the awardees were paid compensation. The petitioners did not submit any objection against such payment. Objections were received from the petitioners after the date of payment and deposition of compensation money to the Court of the learned Land Acquisition Judge, Alipore. The petitioners made their first attempt to get compensation by way of an application under the Right to Information Act, only on May 28, 2015. The petitioners did not produce their patta claiming their right to get compensation in respect of the lands in question, which are vested land of the Government and they also failed to raise any objection prior to making payment of compensation of money to the awardees. At such a belated stage without any explanation of the delay and their lapses, the writ petition is not maintainable.

14. It was the, further, case of the State that the provisions of the Act of 2013 do not apply in the instant case as the award has already been declared, compensation has been paid to the awardees, and the rest of the compensation money has been deposited in the Court of the learned Land Acquisition Judge, Alipore.

15. The learned Single Judge after considering the respective stand of the parties held that in view of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, it cannot be said that the proceeding has lapsed.

16. Learned Judge, further, observed that the possession of the land was taken in the year 1993 and made over to the requiring body to the knowledge of the petitioners. Since then the petitioners remained dormant. They submitted representation before the authority only in 2015 and filed the present writ petition in 2016. Placing reliance upon the observations of the Supreme Court in the case reported at (2020) 8 SCC 129 (Indore Development Authority v. Manoharlal), the learned Single Judge dismissed the writ petition holding that no reasonable explanation being given by the petitioners for such inordinate delay, the Court should not go into the stale demand of the petitioners after the lapse of years.

17. The documents disclosed in the affidavit filed by the State before the learned Single Judge show that compensation amount was paid to the different landowners in the month of January 2001.

18. Section 11A of the said Act of 1894 along with the State amendment is quoted below :

"[11A. Period within which an award shall be made.—(1) The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation.—In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.]

STATE AMENDMENT

West Bengal. —In section 11A, after the proviso, insert the following proviso, namely:—

"Provided further that in respect of the acquisition of the land referred to in sub-section (3A), and sub-section (3B) of section 9, the award shall be made within a period of two years from the date of the issue of the public notice under section 9."

19. In this case date of publication of notice under Section 9(3A) was on August 12, 1999, and the award was published within two years from the said date. Therefore, there cannot be any lapse of proceedings in view of the amended provision of Section 11A of the Land Acquisition Act, 1894.

20. We are, therefore, of the opinion that the issue, on which the case was remanded to the writ petitioners as to whether the proceeding has lapsed, has been rightly answered by the learned Single Judge.

21. We are, however, of the opinion that there might be some delay on the part of the petitioners in approaching this Court, but since the right to property is a valuable right flowing from Article 300A of the Constitution of India, merely on the ground of delay the State cannot deny its obligation to compensate the petitioners.

22. The State, in its affidavit, admitted the fact that the petitioners are "patta" holders in respect of the vested land of the State. The State does not deny that lands belonging to the petitioners were acquired. The State also did not deny the fact that adjoining plot owners whose lands were acquired for the purpose of construction of the Calcutta Leather Complex were given compensation. The only ground that has been taken by the State to deny the claim of the writ petitioners is that they failed to verify their names as awardees by showing patta along with possession.

23. It is immaterial that the possession of lands in question was taken in the year 1993 without any acquisition. Fact remains that the acquisition proceeding was revived only in the year 1999, by the issuance of a notice under Section

9(3A) of the Land Acquisition Act, 1894 as amended by the West Bengal State Amendment Act. The writ petitioners approached this Court in the year 2005. Therefore, delay, if any, in this case, is not as fatal so as to frustrate a claim for compensation which is guaranteed under Article 300A of the Constitution of India.

24. In the case reported at (2020) 2 SCC 569 (Vidya Devi v. State of Himachal Pradesh) the Supreme Court directed payment of compensation in favour of the appellant therein, who filed a writ petition before the Himachal Pradesh High Court in the year 2010 for payment of compensation against the land, possession of which was taken by the State in the year 1967. It was held, inter alia, as follows:

"12.8. The contention of the State that the appellant or her predecessors had "orally" consented to the acquisition is completely baseless. We find complete lack of authority and legal sanction in compulsorily divesting the appellant of her property by the State.

...

12.12. The contention advanced by the State of delay and laches of the appellant in moving the Court is also liable to be rejected. Delay and laches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the Court. Condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case. It will depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice.

12.13. In a case where the demand for justice is so compelling, a constitutional court would exercise its jurisdiction with a view to promote justice, and not defeat it. [P.S. Sadasivaswamy v. State of T.N., (1975) 1 SCC 152 : 1975 SCC (L&S) 22]

...

13. In the present case, the appellant being an illiterate person, who is a widow coming from a rural area has been deprived of her private property by the State without resorting to the procedure prescribed by law. The appellant has been divested of her right to property without being paid any compensation whatsoever for over half a century. The cause of action in the present case is a continuing one, since the appellant was compulsorily expropriated of her property in 1967 without legal sanction or following due process of law. The present case is one where the demand for justice is so compelling since the State has admitted that the land was taken over without initiating acquisition proceedings, or any procedure known to law. We exercise our extraordinary jurisdiction under Articles 136 and 142 of the Constitution, and direct the State to pay compensation to the appellant."

25. The same view has been reiterated by the Supreme Court in a recent judgment reported at (2022) SCC OnLine SC 410 (Sukh Dutt Ratra v. State of Himachal Pradesh).

26. In that case the Supreme Court directed to pay compensation to the appellants who filed the writ petition after 38 years against the State. In that case, the Supreme Court was also approached after about six years after the order passed by the Himachal Pradesh High Court in the year 2013. Negating the contention advanced on the behalf of the State of Himachal Pradesh as to the delay and laches the Supreme Court held as follows:

"16. Given the important protection extended to an individual vis-a-vis their private property (embodied earlier in Article 31, and now as a constitutional right in Article 300-A), and the high threshold the State must meet while acquiring land, the question remains- can the State, merely on the ground of delay and laches, evade its legal responsibility towards those from whom private property has been expropriated? In these facts and circumstances, we find this conclusion to be unacceptable, and warranting intervention on the grounds of equity and fairness.

17. When seen holistically, it is apparent that the State's actions, or lack thereof, have in fact compounded the injustice meted out to the appellants and compelled them to approach this court, albeit belatedly. The initiation of acquisition proceedings initially in the 1990s occurred only at the behest of the High Court. Even after such judicial intervention, the State continued to only extend the benefit of the court's directions to those who specifically approached the courts. The State's lackadaisical conduct is discernible from this action of initiating acquisition proceedings selectively, only in respect to the lands of those writ petitioners who had approached the court in earlier proceedings, and not other land owners, pursuant to the orders dated 23.04.2007 (in CWP No. 1192/2004) and 20.12.2013 (in CWP No. 1356/2010) respectively. In this manner, at every stage, the State sought to shirk its responsibility of acquiring land required for public use in the manner prescribed by law.

18. There is a welter of precedents on delay and laches which conclude either way - as contended by both sides in the present dispute - however, the specific factual matrix compels this court to weigh in favour of the appellant-land owners. The State cannot shield itself behind the ground of delay and laches in such a situation; there cannot be a 'limitation' to doing justice. This court in a much earlier case -Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, held:

"Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which

it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material.

But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.”

27. We are of the opinion that justice will be sub-served if the State is directed to pay compensation to the appellants as has been paid to the similarly circumstanced persons whose lands have been acquired and who have been paid compensation following the L.A. Case No. 4/34 of 1999-2000.

28. In that view, we direct the State to verify as to whether the appellants have interest in the lands in question and whether the said lands have been acquired and utilised for the purpose of the Calcutta Leather Complex project. The persons interested in the lands including appellants should be heard by the State at the time of undertaking such exercise.

29. If the answers are found in the affirmative, the State shall pay compensation to the appellants in terms of the award passed in the L.A. Case No.4/34 of 2019-2000 along with all statutory benefits within a period of two months from the date of communication of this order treating it as a case of deemed acquisition.

30. Accordingly, M.A.T. No. 202 of 2022 and I.A. No. C.A.N. 1 of 2022 are disposed of.

31. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.