

(2021) 12 CAL CK 0097
In the Calcutta High Court
Case No : Writ Petition No. 8163 Of 2016

Ajet Baidya And Others

APPELLANT

Vs

State Of West Bengal And Others.

RESPONDENT

Date of Decision : 22-12-2021

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 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
Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And
Resettlement Act, 2013 — Section 24(1)(a), 24(2)

Citation : (2021) 12 CAL CK 0097

Hon'ble Judges : Suvra Ghosh, J

Bench : Single Bench

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

Final Decision : Dismissed

Judgement

Suvra Ghosh, J

1. The prayers of the writ petitioners are as follows:

a) A declaration be made declaring the Land Acquisition Case being No. L.A. 4/34 of 1999-2000 stood lapse and the respondent authorities be

directed to put petitioners in possession to their respective plot of land forthwith.

b) In the alternative a Writ in the nature of Mandamus do issue commanding the respondents their men, agents, servants and/or assigns particularly

respondent No. 2 to acquire the petitioner Nos. 1 to 4's parcels of land measuring each 19 decimals pertaining to Plot/Dag No. 911/1364, 21

decimals of land of the petitioner No. 5 pertaining to Plot/Dag No. 1364 and 10 decimals of land of the predecessor-in-interest of petitioner No. 6

pertaining to Plot/Dag No. 911/1371 lying at Mouza: Gangapur, J.L. No. 35 in the

District of South 24 Parganas and to pay the land acquisition

compensation at the present market value of the land in that area in terms of the present land acquisition act and complete the acquisition proceeding

within 6 (six) weeks from the date of the order to be made herein.

c) A Writ in the nature of Mandamus do issue commanding the respondents their men, agents, servants and/or assigns particularly respondent No. 2 to

make the payment of compensation to the petitioners within the time stipulated by this Honâ??ble Court.â??

2. The writ petition was dismissed by an order dated 4thÂ July, 2016 and appeal against the said order was disposed of by Honâ??ble Division

Bench of this Court by an order dated 2nd November, 2017 in M.A.T. 1368 of 2016, granting liberty to the petitioners to pursue the remedy available

under section 18 of the Land Acquisition Act, 1894

3. Review of the said order was sought by the petitioners and by an order dated 25th September, 2019 in R.V.W. 272 of 2017, the Honâ??ble

Division Bench recalled the order dated 2nd November, 2017 in M.A.T. 1368 of 2016 by allowing the review application and remanded the writ

petition to this court for fresh hearing.

4. It is submitted on behalf of the writ petitionersâ?? that petitioners no. 1 to 5 and predecessor-in-interest of petitioner no. 6 acquired right, title and

interest over the plot of land in question by virtue of rayati settlement deeds executed by the Government of West Bengal in their favour on 25th April,

1984 and were in possession of the same. On demise of the father of the sixth petitioner, this petitioner stepped into his shoes along with his three

sisters Kaharjan Bibi, Alekjan Bibi and Malekjan Bibi.

5. It is further contended that part of the petitionersâ?? land was acquired in Land Acquisition Case No. 4/34 of 1999-2000 for the purpose of

construction of leather complex though possession of the land was taken in 1993. No notice under section 9(3A) of the Land Acquisition (West

Bengal Amendment) Act, 1997 or section 12(2) of the Land Acquisition Act 1894 was served upon the petitioners and no compensation was also paid

to them. As such, the Land Acquisition Case being L.A. 4/34 of 1999-2000 stood lapsed after expiry of the statutory period in terms of section 11A of

the Act of 1894 and the petitioners are entitled to compensation at the present market value of the land after completion of acquisition proceedings.

6. A report in the form of an affidavit was submitted by respondent nos. 1, 2 & 3 which demonstrates that Land Acquisition Case being L.A. II/1 of

1993-94 was initiated for the purpose of establishment of Calcutta Leather Complex and upon issuance of notice of requisition under section 3(1) of

the West Bengal Land (Requisition and Acquisition) Act, 1948 on 17-11-1993, possession of the land was taken and made over to the requiring body

on 26-11-1993 but the said proceedings could not be completed in view of a writ petition filed by one Ziad Ali Molla. Subsequently Land Acquisition

Case No. 4/34 of 1999-2000 was initiated and notice under section 9(3A) of the Land Acquisition (West Bengal Amendment Act), 1997 was issued

on 12-08-1999 and enquiries conducted under the Act. Objection was raised in respect of the award by some persons as a result of which the

compensation amount with regard to such persons was not paid and was deposited in the court of the learned Land Acquisition Judge, Alipore. The

petitioners failed to produce documents in respect of their title and possession in respect of the land and objection was received from the petitioners

after the compensation amount was paid/deposited. The willing land losers were paid compensation in January, 2001 and compensation with regard to

the other awardees was deposited in court on 10th March, 2006. As such, the writ petition is not maintainable and is liable to be dismissed.

7. It appears from the letter issued by the Block Land & Land Reforms Officer, Bhangore â?" I, South 24 Parganas to the Additional Land

Acquisition Officer, South 24 Parganas on 2nd September, 2013 (annexure R2 to the report filed by respondent nos. 1, 2 and 3) that the names of the

petitioners were recorded as patta holders in respect of plots in question. It is not in dispute that possession of the plots was taken in 1993 after

initiation of acquisition proceedings and certificate of possession was issued in favour of the requiring body on 26th November, 1993 in L.A. Case No.

II/1 of 93-94. A copy of certificate of the possession demonstrates that the plots occupied by the petitioners were included therein. Admittedly, L.A.

Case No. II/1 of 93-94 could not be completed. Subsequently, L.A. Case No. 4/34 of 1999-2000 was initiated in respect of the same plots.

8. The petitioners claim that no notice was served upon them either under section 12(2) of the Land Acquisition Act, 1894 or section 9(3A) of the

Land Acquisition (West Bengal Amendment Act), 1997 and consequentially no compensation was paid to them. The petitioners submitted several

representations before the concerned authority claiming compensation but such representations fell on deaf ears.

9. It appears that notices under section 12(2) of the Act of 1894 and under section 9(3A) of the 1997 Amendment Act were issued by the authority in

the year 1999 and 2000 which cover the property of the petitioners but it cannot be ascertained from the said notices whether they were actually

served upon the petitioners. A notice under section 4 of the West Bengal Land (Requisition and Acquisition) Act, 1948 in the form of gazette

notification dated 31st March, 1997 with regard to the plots in question was also issued.

10. The petitioners say that as no award was published despite taking possession of the land, the acquisition proceedings stood lapsed under section

11A of the Land Acquisition Act, 1894. But documents reveal that notice of acquisition as well as notice of award was published by the State

Authorities and compensation has been paid to most of the awardees. The respondents submit that the petitioners failed to produce any document in

support of their title and possession in respect of the land and raised objection against the proceedings only after the proceedings was concluded and

compensation was paid/deposited. It is also submitted that compensation in respect of which dispute arose was deposited in court on 10th March,

2006.

11. Therefore it is crystal clear that L.A. proceedings being 4/34 of 1999-2000 was concluded and compensation disbursed within the statutory period

of time. Admittedly no compensation was granted to the petitioners. In the premises, the prayer of the petitioners for a declaration that the acquisition

proceeding stood lapsed cannot be acceded to.

12. The petitioners have, in the alternative, prayed for compensation at the present market value of land in terms of the present Act of 2013.

13. Section 24(1a) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 states that in

a proceeding initiated under the Land Acquisition Act, 1894 when no award under section 11 of the Act has been made, then all provisions of the 2013

Act relating to the determination of compensation shall apply. Section 24(2) states that in case of such land acquisition proceedings initiated under the

1894 Act, when the award under section 11 has been made five years or more

prior to the commencement of this Act but physical possession of the land has not been taken or the compensation has not been paid, the said proceedings shall be deemed to have lapsed.

14. In the case in hand, award under section 11 of the 1894 Act was made within time, possession of the land was taken even prior to that and compensation was paid/deposited within the statutory period of time.

15. Learned counsel for the respondents has drawn the attention of the court to the fact that though the petitioners were aware of the acquisition proceedings all throughout they submitted representations before the authority only in 2015 and filed the present writ petition in 2016. As the petitioners chose not to claim any remedy soon thereafter and remained silent over the matter for more than a decade, the conduct of the petitioners tantamounts to waiver of their rights and as such, the court should not deal with the stale demands of the petitioners and the writ petition should fail on the ground of delay and laches on the part of the petitioners.

16. It is admitted that possession of the land was taken in 1993 and made over to the requiring body to the knowledge of the petitioners. Since then the petitioners remained dormant and submitted representations before the authority only in 2015 followed by the present writ petition in 2016. The Honâ??ble Supreme Court, in the judgment in Indore Development Authority v/s. Manoharlal and Others reported in (2020) 8 Supreme Court Cases

129, has observed as follows:-

â??If a claimant is aware of the violation of his rights and does not claim his remedies, such inaction or conduct tantamounts to a waiver of the right.

In such cases, the lapse of time and delay are most material and cannot be ignored by the Court.â? No reasonable explanation being given by the petitioners for such inordinate delay, this court should not go into the stale demands of the petitioners after lapse of years.

17. In view of the observations made hereinabove, the writ petition being W.P. 8163(W) of 2016 is dismissed.

18. However the petitioners shall be at liberty to pursue their claims before the appropriate forum in accordance with law.

19. There shall be no order as to costs.

20. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.