
(2019) 09 CAL CK 0324

In the Calcutta High Court

Case No : Review (RVM) No. 272 Of 2017 In Tender Of Mand Appl (MAT) 1368 Of 2016

Ajit Ali Baidya @ Ajet Baidya & Ors

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 25-09-2019

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : (2019) 09 CAL CK 0324

Hon'ble Judges : Arijit Banerjee, J; Dipankar Datta, J

Bench : Division Bench

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

Final Decision : Allowed

Judgement

1. W.P. 8163 (W) of 2016 was presented before this Court by six individuals as petitioners. In such writ petition, they mainly prayed that :

"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."

2. There was an alternative prayer, which was to the following effect:

"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."

3. While hearing the writ petition, a learned Judge of this Court had called for a report on affidavit from the respondents. Considering such report, His Lordship dismissed the writ petition by an order dated 4th July, 2016 observing that the petitioners shall be at liberty to pursue their respective claims in accordance with law before an appropriate forum.

4. The order dated 4th July, 2016 was carried in appeal by the petitioners, which was registered as MAT 1368 of 2016. By an order dated 2nd November, 2017, MAT 1368 of 2016 was disposed of by a coordinate Bench, presided over by the Hon'ble the Acting Chief Justice, by granting liberty to them to pursue the remedy available under section 18 of the Land Acquisition Act, 1894.

5. Review of the order dated 2nd November, 2017 has been sought for by the petitioners by presenting RVW 272 of 2017, which is taken up for consideration today in the presence of the parties.

6. We find that the review application was admitted by the same coordinate Bench which had the occasion to dispose of the appeal by the order dated 4th May, 2018. A prima facie finding was recorded that there was substance in the review application.

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 2 nd November, 2017.

10. The order under review stands recalled, resulting in revival of MAT 1368 of 2016 to its original file and number.

11. As has been noted above, the main prayer of the petitioners was not addressed by the learned Single Judge. His Lordship proceeded to paraphrase contents of the report on affidavit to hold that the petitioners' remedy lies elsewhere. The claim of the petitioners not having been considered in the proper perspective, the order of the learned Single Judge under appeal stands set aside.

12. The appeal stands allowed. There shall be no order as to costs.

13. We order a remand of the writ petition for fresh hearing by the learned

Single Judge having determination.

14. Since sufficient time has elapsed, it would be desirable if hearing of the writ petition is expedited.

Photostat certified copy of this order, if applied for, be furnished expeditiously.