

(2023) 09 CAL CK 0105
In the Calcutta High Court
Case No : FMA No. 52 Of 2021

Bhim Sen Mondal

APPELLANT

Vs

Competent Authority Under The National Highways Act, 1956
& Ors

RESPONDENT

Date of Decision : 27-09-2023

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6, 9(1), 17(1), 17(4), 48
General Clauses Act, 1897 — Section 21

Citation : (2023) 09 CAL CK 0105

Hon'ble Judges : Debangsu Basak, J;Md. Shabbar Rashidi, J

Bench : Division Bench

Advocate : Soumya Majumdar, Arijit Dey, Md. T.M. Siddique, Soumitra Bandyopadhyay, Aniruddha Sen, Dipankar Das, Sayantan Bose, Shreyaan Bhattacharyya

Final Decision : Dismissed

Judgement

Md. Shabbar Rashidi, J

1. The appeal is in assailment of an order dated January 16, 2020 passed in W.P. No. 23993 (W) of 2014 negating the claim of the appellant for compensation in respect of the scheduled lands sought to be acquired by the National Highway Authorities.

2. It was submitted that the scheduled lands being part of the plots of lands which were earlier acquired by the State, were not the subject matter of acquisition in the earlier acquisition proceeding concluded in the year 1965. The aforesaid lands were held and possessed by the predecessors of the writ petitioner/appellant even after the acquisition proceeding of 1965. Later on, the appellants purchased the said land from its erstwhile owners by registered deeds of conveyance.

3. Upon such purchase, his name was duly recorded in the revenue records. The

appellants have relied upon a certificate of mutation. It was also contended that the name of the appellant was also initially recorded in the LR ROR but subsequently it was deleted and came to be recorded in the name of Asansol Durgapur Development Authority in such ROR. The appellant challenged such recording which was pending with the Land Reforms and Tenancy Tribunal.

4. Be that as it may, the lands in question were sought to be acquired afresh in a subsequent acquisition proceeding at the behest of National Highway Authority, sometimes in 2012. By a notice served upon the appellant, the National Highway Authority offered to pay compensation to the appellant for the structures alone, standing on the suit lands. However, no compensation for the land was offered to him. Challenging such notice, the appellant approached the writ court in W.P. No. 23993 (W) of 2014. Such writ petition was dismissed by the Trial Judge negating the contentions of the writ petitioners to the effect that no compensation was paid to the land owners and that State failed to demonstrate that the possession of the acquired lands were lawfully taken by the State.

5. The said writ application being W.P. No. 23993 (W) of 2014 was contested by the respondents i.e. the State as well as the Asansol Durgapur Development Authority (ADDA). Learned advocate for the appellants has relied upon the affidavits-in-opposition filed in such writ petition on behalf of the Asansol Durgapur Development Authority as well as the State.

6. It was the contention of the State that the lands in dispute were acquired in a land acquisition proceeding initiated under the provisions of Land Acquisition Act, 1894 being L. A. Case No. 1R/1965-66. It was also stated on behalf of the State that compensation for the lands in question in respect of the aforesaid acquisition proceeding was already paid to the then recorded owner thereof, namely Kali Sankar Roy, which was duly received by the owner under a cheque on March 29, 1976. Besides, possession of the acquired land was also taken and made over to the requiring authorities on June 11, 1965.

7. Therefore, the acquisition proceeding attained finality. The lands in question have already been vested to the State. The appellants being the post vesting purchasers cannot and did not acquire valid right and title over the said land and consequently they are not entitled for any compensation as claimed. Learned Advocate for the Asansol Durgapur Development Authority relied upon 1970 (2) Supreme Court Cases 149 (LT. Governor of Himachal Pradesh and Another V. Sri Avisnash Sharma).

8. It was also contended that being subsequent purchasers, the appellant has no authority to challenge the acquisition proceeding which was already accepted by the erstwhile owner i.e. the predecessor-in-interest of the appellant. In support of such proposition, learned advocate appearing for the Asansol Durgapur Development Authority has relied upon the judgment reported in (2012) 12 Supreme Court Cases 133 (V. Chadrasekaran and Another V. Administrative Officer and Others).

9. The documents placed before the Court goes to show that the Land Acquisition Collector proposed to acquire lands at the behest of Asansol Durgapur Development Authority for the purpose of setting up of Industries and related facilities. Notification under Section 4 of the Land Acquisition Act, 1894 was issued in this regard followed by a declaration under Section 6 of the said Act in respect of more or less 449.33 acres of land appertaining to several mouzas published on March 3, 1965. The lands were accordingly acquired as per the schedule attached to the declaration vide L. A. Case No. 1R/1965-66. The State took possession of the acquired lands and thereafter, handed over possession thereof to the requiring body i.e. Asansol Durgapur Development Authority.

10. Respondents have relied upon a notification issued in Form 21 dated June 11, 1965 through which possession of the acquired lands measuring 438.66 acres of land was handed over to and received by the Asansol Durgapur Development Authority in terms of Section 17(1) of the said Act of 1894 with standing crop.

11. The appellant has challenged the action on the ground that the State i.e. acquiring authority never acquired the possession of the said lands from the land owners and therefore it was not in a position to deliver possession of such lands to the requiring authority.

12. Admittedly, the appellants purchased the lands from its erstwhile owners in the year 2009 and they cannot be allowed to challenge something which occurred during the tenure of his predecessors-in-interest. Nothing has been brought on record to establish that the predecessors-in-interest of the appellants ever challenged or raised any objection with regard to taking over of possession of the acquired lands.

13. In the case of Avinash Sharma (Supra), it was laid down by the Hon'ble Supreme Court that,

"4. In the present case a notification under Section 17(1) and (4) was issued by the State Government and possession which had previously been taken must, from the date of expiry of fifteen days from the publication of the notice under Section 9(1), be deemed to be in the possession of the Government. We are unable to agree that where the Government has obtained possession illegally or under some unlawful transaction and a notification under Section 17(1) is issued the land does not vest in the Government free from all encumbrances. We are of the view that when a notification under Section 17(1) is issued, on the expiration of fifteen days from the publication of the notice mentioned in Section 9(1), the possession previously obtained will be deemed to be the possession of the Government under Section 17(1) of the Act and the land will vest in the Government free from all encumbrances."

14. The lands in question were purchased by the appellant by several deeds of conveyance dated April 20, 2009 from one Birendra Kumar Nath. The averment in the deeds of purchase discloses that the said Birendra Kumar Nath, in turn, purchased the aforesaid lands from several persons, namely, Srikanta Karmakar,

Dinesh Chandra Mukhopadhyay, Debdatta Mukherjee, Karunamoy Mondal and Sachibala Roy, Sukhmoy Mondal and Basudeb Pal under several deeds executed and registered in the year 1991 and 1992. All such transactions were effected much after the notification under Section 4 and even so many years after a declaration under Section 6 of the Act of 1894. If that be so, even the immediate predecessor-in-interest of the appellant was not the owner of the lands at that time in view of its acquisition under proceeding No. 01 of 1965-66. The appellant and his immediate predecessor-in-interest purchased the lands after notification under Section 4 of the Act of 1894.

15. Nothing has been placed before us to suggest, let alone establish that, the aforesaid Srikanta Karmakar, Dinesh Chandra Mukhopadhyay, Debdatta Mukherjee, Karunamoy Mondal and Sachibala Roy, Sukhmoy Mondal and Basudeb Pal, ever challenged or raised any objection with regard to payment of compensation or taking possession of the acquired lands. The appellant and his immediate predecessor-in-interest were in no way privy to the acquisition proceeding and as such, the appellant has no authority to question the legality and validity of the acquisition proceeding. The matter regarding acquisition of lands has been settled long back. There appears no justification for unsettling something which is settled.

16. A number of correspondences between the acquiring authority and the requiring authority have been put on record showing the acquisition of lands, transfer of possession of the acquired lands and determination as well as payment of compensation. The aforesaid correspondences date back to 1976 when neither the appellant nor his immediate predecessor-in-interest enjoyed any right in respect of such lands. Documents also show that compensation for the acquired lands was paid to the landowners back in the year 1976. In that view of the facts, the contentions on behalf of the appellant that the possession of the acquired lands was not taken by the acquiring authority and no compensation was paid to the landowners are not justified. Not to talk of the authority of the appellant to challenge the legality and validity of the acquisition proceeding.

17. The case of V. Chandrasekaran (Supra), noted several authorities and dealt with the competence of a subsequent purchaser to challenge the acquisition proceeding. It was held by the Supreme Court, thus: -

"15. The issue of maintainability of the writ petitions by the person who purchases the land subsequent to a notification being issued under Section 4 of the Act has been considered by this Court time and again. In Lila Ram v. Union of India [(1975) 2 SCC 547 : AIR 1975 SC 2112] this Court held that, any one who deals with the land subsequent to a Section 4 notification being issued, does so, at his own peril. In Sneh Prabha v. State of U.P. [(1996) 7 SCC 426 : AIR 1996 SC 540] , this Court held that a Section 4 notification gives a notice to the public at large that the land in respect to which it has been issued, is needed for a public purpose, and it further points out that there will be "an impediment to any

one to encumber the land acquired thereunder". The alienation thereafter does not bind the State or the beneficiary under the acquisition. The purchaser is entitled only to receive compensation. While deciding the said case, reliance was placed on an earlier judgment of this Court in *Union of India v. Shivkumar Bhargava* [(1995) 2 SCC 427]."

18. In the case at hand, on the basis of documents placed on record, we have seen that compensation for the acquired lands were paid to the landowners far back in the year 1976. Nothing has been placed before that such landowners ever preferred any objection to such acquisition. The appellants are totally debarred from challenging the validity of the acquisition proceeding on any ground whatsoever.

19. The appellant has come up with further contention that the subsequent notification at the behest of National Highway Authority of India and the impugned notice served upon the appellant, operated as cancellation of the earlier acquisition proceeding. The appellant has referred to certain inter-departmental correspondences wherein the requiring authority diminished its requirement of lands. It is said that the department was actually deliberating over return of the acquired lands to the landowners as it did not require the quantum of land initially requisitioned.

20. With all due respect, we are unable to accede to such contention. It is well settled law that land once vested cannot be divested even if it is not utilized for the purpose it was acquired. Moreover, the affidavit in opposition relied upon by the appellant categorically indicates that the proposal for return of acquired lands was never materialized. It was laid down by the Hon'ble Supreme Court in *V. Chandrasekaran* case (*Supra*) that,

"25. It is a settled legal proposition, that once the land is vested in the State, free from all encumbrances, it cannot be divested and proceedings under the Act would not lapse, even if an award is not made within the statutorily stipulated period. [Vide *Awadh Bihari Yadav v. State of Bihar* [(1995) 6 SCC 31] , *U.P. Jal Nigam v. Kalra Properties (P) Ltd.* [(1996) 3 SCC 124 : AIR 1996 SC 1170] , *Allahabad Development Authority v. Nasiruzzaman* [(1996) 6 SCC 424] , *M. Ramalinga Thevar v. State of T.N.* [(2000) 4 SCC 322] and *Govt. of A.P. v. Syed Akbar* [(2005) 1 SCC 558 : AIR 2005 SC 492] .]

26. The said land, once acquired, cannot be restored to the tenure-holders/ persons interested, even if it is not used for the purpose for which it was so acquired, or for any other purpose either. The proceeding can not be withdrawn/ abandoned under the provisions of Section 48 of the Act, or under Section 21 of the General Clauses Act, once the possession of the land has been taken and the land vests in the State, free from all encumbrances. (Vide *State of M.P. v. Vishnu Prasad Sharma* [AIR 1966 SC 1593] , *Lt. Governor of H.P. v. Avinash Sharma* [(1970) 2 SCC 149 : AIR 1970 SC 1576] , *Satendra Prasad Jain v. State of U.P.* [(1993) 4 SCC 369 : AIR 1993 SC 2517], *Rajasthan Housing Board v. Shri Kishan*

[(1993) 2 SCC 84] and Dedicated Freight Corridor Corpn. of India v. Subodh Singh [(2011) 11 SCC 100 : (2011) 3 SCC (Civ) 604]”

21. It was further held by the Hon’ble Court that,

“31. In view of the above, the law can be crystallised to mean, that once the land is acquired and it vests in the State, free from all encumbrances, it is not the concern of the landowner, whether the land is being used for the purpose for which it was acquired or for any other purpose. He becomes persona non grata once the land vests in the State. He has a right to only receive compensation for the same, unless the acquisition proceeding is itself challenged. The State neither has the requisite power to reconvey the land to the person interested nor can such person claim any right of restitution on any ground, whatsoever, unless there is some statutory amendment to this effect.”

22. Therefore, the issuance of subsequent notification and the impugned notice under the provisions of National Highway Act, 1956 has got no bearing on the acquisition proceeding accomplished earlier under the provisions of the Act of 1894.

23. In the light of the above discussions, we are of the view that the appellant has failed to establish that the State did not acquire the possession of the acquired lands or no compensation was paid in the acquisition proceeding undertaken under the provisions of the Act of 1894. The appellants, at the same time failed to establish his authority to challenge such proceeding on any ground.

24. In that view of the facts, we find no reason to interfere with the impugned order passed in W.P. No. 23993 (W) of 2014. The same is hereby affirmed.

25. Accordingly, the instant appeal being FMA 52 of 2021 is hereby dismissed, however, without any order as to costs. Connected applications, if any, shall stand disposed of.

26. Urgent photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

27. I agree.