

(2019) 04 CAL CK 0006
In the Calcutta High Court

Case No : Tender Of Md Appl (MAT) No. 750 Of 2018 In CAN 5337 Of 2018

Kaberi Hazra

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 02-04-2019

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 5A, 6, 9, 11, 11A

West Bengal Land Reforms Act, 1955 — Section 4C(5)

West Bengal Land Reforms and Tenancy Tribunal Act, 1991 — Section 10

Citation : (2019) 04 CAL CK 0006

Hon'ble Judges : Biswanath Somadder, J; Arindam Mukherjee, J

Bench : Division Bench

Advocate : Siddartha Mitra, Sumitava Chakraborty, Shatanik Ghos, Kishore Dutta, Tapan Kumar Mukherjee, Soumitra Bandyopadhyaya

Final Decision : Dismissed

Judgement

Arindam Mukherjee, J

1) The appeal is at the instance of the writ petitioner. In the writ petition being W.P. No. 7004 (W) of 2018 (Smt. Kaberi Hazra Vs. The State of West Bengal & Ors.), the appellant has, inter alia, challenged the notification dated 5th December, 1994, made under the provisions of Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the said 'Act') and the Gazette Notification dated 17th January, 1995 made under the provision of Section 6 of the said Act. In the instant appeal the writ petitioner has challenged the order of dismissal of the said writ petition dated 19th July, 2018.

2) The appellant/writ petitioner alleges that she had purchased under a registered deed dated 30th May, 1990 a land measuring about 5 kotthas situated and lying at plot no. 4651 under Tauzi No.-228/229, Mouza-Krishnapur, J.L. No.-17 R.S. Dag No.-180, Khatian No.-1645 within the limits of Additional District Sub-Registrar, Bidhan Nagar, West Bengal (hereinafter referred to as the 'said plot of land'). The said plot of land is a portion of a larger plot of land measuring

about 1.12 acres which comprised the plot No. 4651. One Laxmikanta Pramanik was the original owner of the larger plot of land which includes the said plot of land. His name was recorded in the record of rights. The appellant/writ petitioner after the purchase of the said plot of land, however, did not mutated her name and, as such, the name of the said Laxmikanta Pramanik continued to appear in the record of rights. The appellant/writ petitioner through Laxmikanta Pramanik received a notice dated 3rd February, 1995 issued under Section 9 of the said Act. By the said notice, the holder of the land was asked to attend a meeting on 16th March, 1995 for hearing under Section 11 of the said Act. It is the case of the appellant/writ petitioner that her husband attended the said meeting but no decision was communicated to the appellant/writ petitioner nor any compensation was afforded to her. The appellant/writ petitioner allegedly continued to remain in possession of the said plot of land.

3) The appellant/writ petitioner further alleges that the appellant/writ petitioner obtained clearance from the Land Acquisition Collector, North 24 Parganas that the plot No. 4651 a portion of which comprised the said plot of land was not hit by any land acquisition proceedings as per available office records. This was communicated by the said Land Acquisition Collector to the BL&LRO. Thereafter, the appellant/writ petitioner made an application for conversion of the said plot of land and a conversion case was initiated. Ultimately by an order dated 4th October, 2005 the conversion was granted. The certificate of conversion was issued on 29th November, 2005 pursuant to such conversion the appellant/writ petitioner obtained sanction plan from Bidhan Nagar Municipality for construction of a G+3 building on the said plot of land. The said plot of land was then leased out to one Satrajit Roy and Ankhi Roy the proprietor of Mega City Inn. By constructing the building the said lessee started the business of Mega City Inn from the said plot of land.

4) It is the further case of the appellant/writ petitioner that all on a sudden, the appellant/writ petitioner received a notice dated 12th March, 2015 issued by the BL&LRO north 24 Parganas under the provisions of Section 4C(5) of the West Bengal Land Reforms Act, 1955 alleging that the appellant/writ petitioner has constructed the building unauthorizedly on some part of plot No. 4651 that is to say on the said plot of land. Upon the appellant/writ petitioner approaching the authority concerned on receiving the said notice, the ADM being also the District Land and Land Reforms Officer North 24 Parganas informed the appellant/writ petitioner that nothing can be done on a oral submission and the appellant/writ petitioner has to submit her case in writing. Immediately thereafter, the appellant/writ petitioner made representation on 24th March, 2015. The appellant/writ petitioner having received no reply to the said representation filed an application under Section 10 of the West Bengal Land Reforms and Tenancy Tribunal Act, 1991 before the learned Tribunal, inter alia, challenging the notice under Section 4C(5) of the West Bengal Land Reforms Act, 1955.

5) Initially the appellant/writ petitioner obtained an order for maintaining status-

quo from the learned Tribunal. The said order of status-quo was ultimately vacated and the application was dismissed by the learned Tribunal vide a reasoned order dated 8th May, 2018.

6) Challenging the said order of the learned Tribunal dated 8th May, 2018 the appellant/writ petitioner filed a judicial review before the Division Bench of this Court which was heard on 18th May, 2018. The Hon'ble Division Bench, in course of hearing, however, observed that the acquisition proceedings had remained unchallenged though the notice under Section 4C(5) of the Land Reforms Act is challenged. The challenge to the said notice is, therefore, wholly dependent on the result of the acquisition proceedings. The judicial review was posted for final hearing on a subsequent date. The appellant/writ petitioner in view of such observation made by the Hon'ble Division Bench filed the writ petition challenging the acquisition proceedings as stated hereinabove.

7) The State, on the other hand, alleges that by issuing a notification under Section 4 of the said Act followed by a declaration under Section 6 of the said Act the said plot of land was acquired observing due process of law. The appellant/writ petitioner did not raise any objection at the relevant stage under the provisions of Section 5A of the said Act. The acquisition, therefore, has validly taken place. It is the further case of the State that the entire land comprised in plot no. 4651 was not acquired but the middle portion of the said plot was acquired in the year 1995 pursuant to Section 4 notification dated 5th December, 1994 and Section 6 declaration dated 27th January, 1995. In the process of acquiring the portion of the larger plot of land measuring about 1.12 acres a portion of the said plot of land purchased by the appellant/writ petitioner. The map showing the acquired portion and every other related document was available in the office of the concerned authority for inspection as required under the said Act. The State subsequently called the recorded owner of the said plot of land for hearing by a notice under Section 9 of the said Act pursuant to which the husband of the appellant/writ petitioner appeared on the date fixed and had signed the minutes of the hearing. The said notice also sufficiently described the acquired land to the understanding of the appellant/writ petitioner. The writ petitioner was, therefore, aware of the acquisition proceedings as far back as in 1995 but did not take any step to challenge the acquisition proceeding. On the contrary, the appellant/writ petitioner through her husband had requested the State to allot an alternative plot to the appellant/writ petitioner. Despite such specific knowledge the appellant/writ petitioner proceeded to make construction on the said plot which is of unauthorized nature with the aid of some letters allegedly issued by government officials and conversion order on the basis thereof. Issuance of any letter stating that the land is not hit by any acquisition proceedings does not upset the valid acquisition. That apart, and in any event the appellant/writ petitioner was aware of the acquisition. The State further contends that initially the acquisition was for construction of an approach road for a satellite township. This was for public purpose, and the acquisition had been done in a valid manner following the relevant provisions of the said Act.

Compensation was also awarded which has been sent to the Court concerned upon the same being not received. Once the acquisition had taken place, the property according to the State respondents have vested on to the State. There is no question of returning the land or allowing the appellant/writ petitioner to continue to be in possession of the said plot of land. The State further contends that now the acquired portion is required for the purpose of construction of Metro Railway which is also for a public purpose and, as such, the purpose has shifted from one for which it was initially acquired to another at subsequent stage but both were and still remains to be for public purpose. The State, Therefore, contends that the acquisition is valid and cannot be set aside.

8) The appellant/writ petitioner, in reply, contends that the description of the plot both in Section 4 notification as also in the Section 6 declaration are vague. No specific area was mentioned and, as such, the acquisition based on such notification and declaration cannot be said to be a valid acquisition. Moreover, the possession of the plot was never taken and the appellant/writ petitioner continued to remain in possession for about 25 years from the date on which the acquisition proceedings said to have been initiated and made. No compensation had been paid to the appellant/writ petitioner. In that view of the matter, according to the appellant/writ petitioner, the acquisition proceedings have otherwise lapsed and, as such, the Court should quash and/or set aside the two Gazette Notifications and pass necessary orders of injunction as to declare the said plot of land is free from acquisition.

9) After considering the materials on record and hearing the parties, we are surprised to find the total lack of co-ordination between the various departments of the State. It is difficult to conceive far less to accept as to how the office of the Collector (LA) North 24 parganas issued the memo dated 21st March, 2001 when the acquisition proceedings had advanced stage wise with the gazette notification under Section 4 notification, followed by gazette notification of Section 6 declaration then Section 9 notice and awarding of compensation under Section 11. The relevant portion of the said memo reads as follows:-

"This is to inform him that the R.S. Dag Nos. 5146, 4431, 4402 and 4651 in Mouza krishnapur, J.L. No. 17, P.S. Rajarhat, does not appear to have been hit any L.A. Proceeding under L.A. Act. or any project as per our available office records."

It is also difficult to accept how the conversion has been allowed by the office of the Additional District Magistrate and District Land and Land Reforms Officer North, 24 Parganas, Barasat, as also the certificate of conversion issued by the office of Sub-Divisional Land and Land Reforms Officer, North 24 Parganas in respect of the said plot of land in its entirety when there has been an acquisition proceeding at least in respect of a portion of the said plot of land. Neither the memo dated 21st March, 2001 nor the order of conversion or the conversion certificate are restricted to the portion of the said plot of land which may not have been acquired. All the memos deal with the entire area of the plot of land

which cannot be in view of the acquisition proceeding a correct state of affairs. The building plan has also been sanctioned without the municipal authorities independently verifying about the acquisition. We feel that it is high time for the State to probe into these sorts of irresponsible acts of its officials and indiscriminate issuance of letter contrary to the records and fix liability to avoid the shady dealings of this nature. Just because one or two letters like those written in the instant case which are contrary to records, does not invalidate the acquisition, it does not mean that these officials should be left scot free.

10) It is well established from the materials on record and the document which we had directed the State to produce for our satisfaction that the appellant/writ petitioner was aware of the acquisition proceedings and had attended the hearing under Section 11. It has to be presumed that in absence of any contemporaneous objection from the appellant/writ petitioner that the portion of the said plot of land sought to be acquired under the acquisition proceeding in 1995 was clear and specific otherwise the appellant/writ petitioner as a natural consequences would have put an objection as to the vagueness in description and enquired as to which portion of the said plot of land was sought to be acquired. We, therefore, hold that the appellant/writ petitioner was aware of the specific portion of the said plot under acquisition in March, 1995. It is also an admitted position that in 1995 or even immediately thereafter, the appellant/writ petitioner did not challenge the acquisition proceeding. There is no objection under Section 5A of the said Act. There is also no whisper as to any steps being taken within a reasonable period from the date of hearing under Section 11 of the said Act pursuant to notice under Section 9 thereof when no award or the compensation was paid by the State. Documents produced clearly reveal awarding of compensation and offering the same. Even if, the appellant/writ petitioner did not collect the compensation it does not invalidate the acquisition proceeding. It is also clear from the records that an award for compensation was made within a period of two years as envisaged under Section 11A of the said Act. It also appears from the records produced that the compensation had been sent by the State to the District Court at Barasat in connection with the land acquisition proceedings within two years from 1995. Considering these facts the inevitable conclusion is that the appellant/writ petitioner despite being aware of the acquisition proceedings did not challenge the same, on the contrary, taking advantage of department's letter proceeded to make construction on the acquired land. Only after issuance of a notice under the provisions of Section 4C(5) of the West Bengal Land Reforms Act, 1955 the proceedings before the Land Reforms and Tenancy Tribunal was initiated in 2015-16. The acquisition proceeding has been challenged as late as in 2018 though records clearly reveal that the writ petitioner was specifically aware of the acquisition proceeding in 1995. The conduct of the writ petitioner does not persuade us to grant any relief to the writ petitioner to do substantive justice by setting aside the acquisition by ignoring the delay in approaching the Court.

11) We have also minutely scrutinized the order impugned wherefrom the appeal

emanates and the findings recorded therein vis a vis the documents on record as also the documents produced by the State. We have also gone through the analysis made by the learned Single Judge in respect of the several judgment cited before him. We agree with such analysis and the ratio curled out therefrom. We, therefore, refrain from discussing those judgments once again. We have also considered the ratio laid down in the judgment reported in 2010 (4) SCC 532 cited before us. We find no perversity or palpable infirmity in the said order or to the findings arrived therein. We have already held that the acquisition proceeding had been validly proceeded with and completed in accordance with the provisions of the said Act. In absence of any contemporaneous challenge when the appellant/writ petitioner was aware of the acquisition proceedings to have reached the Section 11 stage, we are unable to accede to any submission made by the appellant/writ petitioner that the acquisition proceedings have lapsed and the gazette notifications be quashed. The challenge to the acquisition proceedings is admittedly at a belated stage. It is also well settled principle that no relief can be granted to a person who challenges the acquisition proceedings at a very belated stage and in the instant case after at least 20 years from specific knowledge of the same. This position is also clear from the judgment reported in 2010 (4) SCC 532.

12) So far as the un-acquired portion of the said plot of land is concerned we have considered the submissions made by the parties both before the learned Single Judge as also before us. It is evident that the middle portion of the said plot has been acquired. The two strips of land on two sides have practically become unusable. In future if the metro railway pillars are placed on the acquired land the portions on both sides of the acquired land cannot be used by the appellant/writ petitioner. It will be open to the appellant/writ petitioner to approach the concerned authority with a prayer to surrender the side lands and seek additional compensation for the same. The State should consider such proposal if made in true spirit. We feel that the learned Single Judge was right in allowing the appellant/writ petitioner to challenge the quantum of compensation. We enlarge the time allowed by the learned Single Judge. The appellant/writ petitioner would be entitled to make necessary application or take such steps as may be advised for enhancement of the compensation within a period of six weeks from date. In the event such application is made, the Court concerned, should dispose of the same as expeditiously as possible but not later than six months from the date of making such application.

13) In course of hearing the appellant/writ petitioner has strenuously put forth a case of demolition of the building by miscreants allegedly at the instance of their political god fathers. The appellant has also tried to impress upon that such demolition took place without due process of law by showing some photographs. It is further alleged that the State/respondent have no faith in law and, therefore, has resorted to muscle power to demolish the building immediately after dismissal of the writ petition without even affording the appellant/writ petitioner an opportunity to challenge the order of dismissal. The entire act of

the State in demolition of the G+3 storeyed building on the said plot of land according to appellant/writ petitioner is not only illegal and wrongful but requires interference by the Court of appeal and this Court. We have heard the appeal on the basis of the pleadings before the first Court. The cause of action in the writ petition was challenge to the acquisition proceedings. The order dismissing the writ petition was assailed in the appeal before us. The demolition of the building post-dismissal of the writ petition is a separate cause of action which cannot be agitated in the instance appeal. We are unable to consider such case of the appellant/writ petitioner and keep the same open for challenge if the appellant/writ petitioner is entitled to challenge the same in accordance with law.

14) In the facts and circumstances as aforesaid, we are inclined to dismiss the appeal which is accordingly dismissed. There shall, however, be no order as to costs.

Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties on an urgent basis.