
(2018) 05 CAL CK 0246
In the Calcutta High Court
Case No : Writ Petition 7004 (W) of 2018

Kaberi Hazra

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 25-05-2018

Acts Referred:

West Bengal Land Reforms Act, 1955 — Section 4C, 6
Land Acquisition Act, 1894 — Section 9

Citation : (2018) 05 CAL CK 0246

Hon'ble Judges : PROTIK PRAKASH BANERJEE, J

Bench : Single Bench

Advocate : Ashis Kumar Sanyal, Sunil Kumar Chakraborty, S. Chakraborty,
Tapan Mukherjee, Manas Kundu, Saikat Chatterjee, Ujjal Chatterjee

Final Decision : Disposed Of

Judgement

The writ petition is moved on service. The State of West Bengal is represented. Let the affidavit of service be kept on record. Mr. Sanyal, learned

advocate appearing for the writ petitioner along with Mr. Sunil Kumar Chakraborty and Mr. S. Chakraborty submits that he purchased a land in 1990.

This was about 23 decimal. This land is a part of larger land measuring 1.12 decimals. He submits that he was not aware that any part of this land as

was purchased by him in 1990 was acquired at the time when he purchased it.

He would not have known of it also, if the Respondent State of West Bengal had not proceeded against his client under Section 4C of the West

Bengal Land Reforms Act, 1955. He moved against it before the jurisdictional Land Reforms and Tenancy Tribunal. At that time it was disclosed that

this involved acquisition of land under the Act of 1884. It was disclosed that the acquisition was made in 1994-95. So his case was dismissed by the

Learned Tribunal.

He submits that it would be clear from the Section 6 notification appearing at page 65 of the writ petition that the portion of land notified by the

Government to have been acquired is 0.705 acres equivalent to around 70 or 83 decimal in Dag No.46/51 but it was not demarcated which portion is

being taken and only the word 'middle' has been indicated by using abbreviation 'Do-'. He submits that if he purchased land in 1990

any acquisition which takes place in 1994-95 of only a part of the land from the whole, then he is entitled to notice of demarcation before the land was

taken away.

On the other hand Learned Additional Government Pleader Mr. Tapan Mukherjee, assisted by Mr. Manas Kundu, Mr. Saikat Chatterjee and Mr.

Ujjal Chatterjee, submits that from an authenticated map of the mouza it is very clear that Dag nos.5651 is a four sided plot and there is a Pink mark

running from the middle of the mouza clearly de-limiting that the part which is shaded with Pink and which is also at the middle of the dag has been

acquired. He refers to the schedule under Section 9 of the Act I of 1894 showing that at the time of demarcation the husband of the writ petitioner

was present and signed. This appears to be a verified schedule in terms of the rules and he submits that Form 13A showing at Item No.43 that one

Kaberi Hazra was paid compensation for acquisition of land by an account payee cheque. However, it is difficult to make out any signature

acknowledging that Kaberi Hazra has received this amount and Mr. Sanyal submits on instruction that these papers were not produced before today

even though this the second round of litigation. The documents referred to by the Learned Tribunal are not these.

The learned advocates are at issue as to whether these documents have been produced before or not. This cannot be heard without exchange of

affidavits and production of all records. Once affidavits are called for and the records are produced by the State of West Bengal, the matter will have

to be heard. Now Mr. Mukherjee submits that the land has already been handed over to the Metro Railways and only because of the earlier order of

the Learned Tribunal the work has been stopped. If the writ court continues any stay, then public money and public infrastructure will be jeopardized

for private interest. If indeed it is not possible for the respondents to establish

without disclosing records that the writ petitioner was aware of the demarcation and the acquisition of the present land then whatever copies have been shown by the respondents from the Bar cannot be believed as against a verified petition accompanied by affidavit.

None of the documents produced before me is a certified copy which alone bear the imprimatur of a public document or an admissible copy of a private document where it is maintained by the State. Accordingly, without affidavits I have to accept Mr. Sanyal's client's verified statement to be true as of date. Hence, there shall be an interim order of status quo restraining the parties to this writ petition from proceeding any further with the acquisition. This is in fact the form of the relief as prayed for by the writ petitioner as an interim relief. The Metro Railways are not parties to the present writ petition.

The Division Bench order which was placed before me at page 60 of the writ petition Annexure P-9 was in respect of the proceeding before the Land Reforms & Tenancy Tribunal and cannot bind the writ court in the challenge to the acquisition proceeding under the Land Acquisition Act, 1894, however, belated. In fact no interim order was passed by the Hon'ble Division Bench precisely because till then there was no challenge to the acquisition proceedings. Affidavit in opposition shall be filed within three weeks after reopening of the Court. Reply, if any, within one week thereafter. The Matter is to appear on 25th June, 2018 before the appropriate Bench. The interim order shall continue till disposal of the writ petitioner or further order whichever is earlier. I make it clear that all the findings as above are tentative and subject to the final decision of this Court.