

(2023) 06 CAL CK 0057
In the Calcutta High Court
Case No : WPA No. 681 Of 2015

Kishan Lal Chandak & Ors

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 26-06-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Land Acquisition Act 1894 — Section 4, 4(1), 6, 6(1), 6(2), 11
Code Of Criminal Procedure, 1973 — Section 144

Citation : (2023) 06 CAL CK 0057

Hon'ble Judges : Jay Sengupta, J

Bench : Single Bench

Advocate : Santanu Chatterjee, Divya Chatterjee, Rajendra Kr. Nandi, Chandi Charan De, Reshmi Rahaman

Final Decision : Dismissed

Judgement

Jay Sengupta, J

1. This is an application under Article 226 of the Constitution of India praying for a declaration that LA Case No. 23/04-05 and all proceedings notifications, declarations, awards, etc are null and void. Directions upon the respondent to withdraw and cancel the notification being Jalpaiguri No. 752(2) L.A./309-R/SJDA-23/04-05 dated 01.12.2006 issued under Section 4 of the Land Acquisition Act 1894 and the notification no. 2486/L.A./11-14-2008 LAP No. 23/2004-05 dated 16.06.2008 under Section 6 of the Land Acquisition Act 1894.

2. Learned counsel for the petitioner submitted as follows. Between the years August 2007 and October 2008, the petitioners purchased some land measuring 3.27 acres comprising several plots at Mouza Debgram, District Jalpaiguri, fully described in paragraph 2, at page 6 of the writ petition, hereinafter referred to as the 'said plots of land'. The petitioners were in actual physical possession of the said plots of land since the date of purchase. Prior to purchase, in the year 2006, there was some disputes with regard to the boundary of the said plots of land

between the vendors of the petitioners and the authorities of the Mahananda Barrage. Pursuant to a direction of the Learned Executive Magistrate, in a proceeding under Section 144 of CrPC, the Block Land & Land Reforms Officer, Rajganj, demarcated the said plots of land and filed two reports along with site map, before the said Learned Executive Magistrate on 14th February 2007 and on 2nd April 2007. From the said report it revealed that the erstwhile owners of the said plots of land were in actual physical possession of the said land. After the said demarcation of the said plots of land, the erstwhile owners transferred the subject land in favour of the petitioners by executing several deeds of conveyance and delivered possession of the said plots of land to the petitioners. The petitioners butted and bounded the said plots of land by erecting walls. The petitioners thereafter got their names mutated in the records. All of a sudden by a notice dated 23rd October 2007, the Sub-Divisional Land & Land Reforms Officer, Sadar, Jalpaiguri, directed the petitioners to remove the boundary walls from the said plots of land within seven days. Challenging the said notice dated 23rd October 2007, the petitioners moved a writ petition, being W.P. No. 24480 (W) of 2007, before this Court. On 1st November 2007, the Hon'ble Court was pleased to direct the respondents not to give any effect to the said impugned notice dated 23rd October 2007. The said interim order was extended from time to time. The said writ petition was still pending before this Court. While the petitioners had been possessing the said plots of land, all of a sudden on 25th March 2010, the Collector Jalpaiguri took possession of the said plots of land from the petitioners, on the plea that the subject land was acquired in a proceeding under the provisions of the Land Acquisition Act. The petitioners were completely taken aback. Thereafter the petitioners sought information from the office of the Land Acquisition Collector, Jalpaiguri. In reply to the said queries the Special Land Acquisition Collector, Jalpaiguri, by his letter dated 20th July 2010, informed the petitioners about the acquisition proceeding pertaining to the subject land but without any copy of notifications under Sections 4 and 6 of the L.A. Act. After several RTI applications were made by the petitioners to the authorities concerned, ultimately by a reply dated 30th September 2013, the petitioners were informed that the award amount was deposited with the Ld. Government Pleader, Jalpaiguri. By another reply under the RTI Act, dated 4th July 2014, the petitioners were supplied with the copies of the notifications under Sections 4 and 6 of the Land Acquisition Act and a copy of the award. It revealed from the said notifications that preliminary notifications under Section 4 of the Land Acquisition Act, 1894, in respect of the said plots of land, was published in the Kolkata Gazette on 1st December 2006.

Thereafter on 16th June 2008, the declaration under Section 6 of the Land Acquisition Act, 1894, declaring the said plots of land was needed for public purpose, was published in the Kolkata Gazette. It was evident from the above notifications that, Section 4 notification was published on 1st December 2006 and the declaration under Section 6 was notified in the Gazette on 16th June 2008, clearly beyond the period of one year from the date of issuance of

notification issued under sub-section (1) of Section 4 of the said Act, as enshrined under Section 6(1) proviso (ii) of the Land Acquisition Act, 1894. Therefore the declaration made, under sub-section (1) of Section 6 was void and of no effect. There was no dispute with regard to plot nos. 497 and 502, which were fully acquired. In reply dated 13th September 2022, the State Public Information Officer informed that, save the plot no. 498/1470, all other five plots mentioned in the applications and the plots mentioned in the Section 6(1) notifications were same. The petitioners thereafter filed before the Hon'ble Court, one supplementary affidavit clarifying the status of the plots. In paragraphs 14 and 17 of the decision, reported in (2007) 3 SCC 470, Ashok Kumar & Ors. versus State of Haryana & Ors., the Hon'ble Supreme Court held that the proviso appended to Section 6(1) was in the negative term. It was, therefore, mandatory in nature. Relying on the above decision and a decision of Constitution Bench (reported in (2002) 3 SCC 533, Padma Sundara Rao Versus State of T.N.), the Hon'ble Supreme Court, in Anil Kumar Gupta versus State of Bihar & Ors., reported in (2012) 12 SCC 443, at paragraph 18 held that: "We may now advert to the main question as to whether the declaration issued under Section 6(1) was a nullity because the same was issued after expiry of the period of one year specified in the first proviso (ii) to that section. This issue is no longer res integra and must be treated as settled by the judgments of this Court in Padma Sundara Rao v. State of T.N. Ashok Kumar versus State of Haryana and a recent judgment in Devendra Kumar Tyagi versus State of U.P. In Padma Sundara Rao Case, the Constitution Bench unequivocally held that the second proviso to Section 6(1) is mandatory and a declaration issued beyond the period of one year from the last publication of the notification issued under Section 4(1) is nullity. In view of the proposition laid down in these judgments, it must be held that the learned Single Judge had rightly held that the declaration issued under Section 6(1) was non est." The possession of the said plots of land were taken over from the petitioners by the Collector on 25th March 2010. Therefore, possession of the said plots of land, as on the date of transfer of the land to and in favour of the writ petitioners, was with the vendors and they were the owners of the land. Hence the vendors had validly transferred the right, title and interest in respect of the land in favour of the writ petitioners. In view of the above, the writ petitioners had the locus standi to maintain the writ petition. On the aforesaid point of locus standi, reliance was placed on one decision of the Single Bench of this Hon'ble High Court, reported in 2016 SCC Online Cal 630, ABCL Infrastructure Pvt. Ltd. versus State of West Bengal. The principle was well settled that where any statutory provision provides a particular manner for doing a particular act, then that thing or act must be done in accordance with the manner prescribed therefor in the Act. All the decisions, cited by the learned senior counsel for the respondents, categorically held that the subsequent purchasers did not have any locus standi to challenge the acquisition proceedings. But in the present case, the challenge was not the acquisition proceedings. It was only for a declaration that the acquisition proceedings had lapsed in view of Section 6(ii) of the Land Acquisition Act, 1894. Therefore, the

ratio in those cases had no application to this present case.

3. Learned senior counsel representing the State submitted as follows. According to the writ petition, Santa Chandak purchased some lands in 2008. Kishan Lal Chandak purchased land by different deeds between 2007 and 2008. It was the admitted position that the writ petitioners purchased all the lands on and from the year 2007 to 2008. The notification under Section 4 of the Act 1894 was published on 1st December, 2006. The acquisition proceeding was completed after complying all the procedure including declaring award in the name of the awardees and that was very clear from the writ petition itself. Admitted position was that the writ petitioners filed another writ petition W.P. No. 24480 (W) of 2007. From the above it was very clear that the writ petitioners were subsequent purchasers after notification under Section 4 of the Land Acquisition Act 1894 published on 1st December 2006 and the petitioners had no right, title and/or jurisdiction to challenge the notification under Section 4 of the Land Acquisition Act and/or the proceeding under Land Acquisition Act, 1894. The writ petitioners admitted that the writ petitioners were the subsequent purchase i.e. after the date of notification under Section 4 of the Land Acquisition Act, 1894 published. Reliance was placed on (2012) 12 SCC 133 (V. Chandrasekharan and another versus Administrative Officer & Others). The law on the issue can be summarised to the effect that a person who purchased land subsequent to the issuance of Section 4 notification with respect to it, was not competent to challenge the validity of the acquisition proceedings on any ground whatsoever for the reason that the sale deed executed in his favour did not confer upon him, any title and at the most he could claim compensation on the basis of his vendor's title. In AIR 1975 SC 2112 (In Lila Ram Versus Union of India), the Hon'ble Apex Court held that anyone who dealt with the land subsequent to a Section 4 notification being issued, did so, at his peril. In (1996) 7 SCC 426, AIR 1996 SC 540 (Sneha Prabhu versus State of U.P.), it was held that a Section 4 notification gave notice to the public at large that the land in respect of which it had been issued, was needed for public purpose and it further pointed out that there would be an impediment to anyone to encumber the land acquired thereunder." The alienation thereafter did not bind the State as the beneficiary under the acquisition. The purchaser was entitled to receive the compensation. While deciding the said case, reliance was placed on an earlier judgment of this Court in Union of India versus Shiva Kumar Bhargava (1995) 2 SCC 427. Similar view was taken in (1996) 3 SCC 124 AIR 1996 SC 1170 (U.P. Jalnigam versus Kalra Properties Pvt. Ltd.) and (1996) 11 SCC 698 (Star Wire (India) Ltd. versus State of Haryana). In view of these, the sale of land after issuance of Section 4 notification was void and the purchaser could not challenge the acquisition proceeding. Reliance was placed on (2009) 10 SCC 689 (Tika Ram versus State of U.P.). In (2020) 8 SCC 129 (Indore Development Authority versus Monoharlal & Other), (1996) 1 SCC 311 Market Committee versus Krishan Murari and (1996) 3 SCC 99 (Putta Lal versus State of U.P.), the concept of vesting was considered. Reliance was placed on AIR 1957 SC 344 (Fruit & Vegetable Merchants Union versus Delhi

Improvement Trust). Once vesting took place, a person who remained in possession was only a trespasser, not in rightful possession and vesting contemplated absolute title, possession in the State.

4. I heard the learned counsels for the parties and perused the writ petition, the affidavits and the written notes of submissions.

5. It appears that in respect of the land in question a notification under Section 4 of the Act I 1894 was published on 01.12.2006. Admittedly the petitioners thereafter purchased some such land in the period of between 2007-2008. The petitioner's prime contention is that the notification issued under Section 6 of the Act I of 1894 on 16.06.2008 was vitiated as the said was done beyond a period of one year from the issuance of notification under Section 4 of the said Act.

6. In view of the decisions of the Hon'ble Apex Court as cited during arguments, there can be no doubt that the provision, that notification under Section 6 of Act I 1894 is to be published within a year from the notification under Section 4 of the said Act, is mandatory.

7. However, to take up the issue in the present writ petition the petitioners must have the necessary locus.

8. In V. Chandrasekharan (supra), the Hon'ble Supreme Court held that a person who purchased land subsequent to the issuance of Section 4 notification was not competent to challenge the validity of the acquisition proceeding on any ground whatsoever for the reason that the sale deed executed in his favour did not confer him any title.

9. It goes without saying that mutation of names in the land records does not vitiate the actions taken in terms of Sections 4, 6 and 11 of the 1894 Act.

10. In Lila Ram (supra), the Hon'ble Apex Court held that anyone who dealt with land subsequent to a notification under Section 4 did so at his peril. A subsequent alienation did not bind the State. The purchaser was only entitled to receive compensation.

11. The reliance of the learned counsels for the State on the decisions of the Hon'ble Supreme Court on the concept of vesting is quite apt. Once vesting takes place, the other person, if any, remaining in possession of such land was to be treated as a trespasser.

12. Had this not been the position of law, any unscrupulous subsequent purchaser would thwart a process of acquisition of land by bypassing the stipulations and entering into sham purchases of lands at throwaway prices post-Section 4 notification in order to make unjust gain.

13. In any event, after initiation of the proceeding for land acquisition in the instant case, all other formalities were duly complied with and an award was declared.

14. In view of the above discussions, I do not find any merit in the contentions and claims of the petitioners raised in the present application. Therefore, the writ petition is dismissed.

15. However, there shall be no order as to costs.

16. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.