
(2009) 11 CAL CK 0034
In the Calcutta High Court
Case No : Writ Petition No. 18052 (W) of 2008

Sattar Ali

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 17-11-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 17, 17(1), 23, 4, 4(1)

Citation : (2012) 4 CHN 55

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Rafiqul Islam, for the Appellant; Gita Mukherjee, for the Respondent

Final Decision : Allowed

Judgement

Jayanta Kumar Biswas, J.—The seven petitioners in this writ petition dated July 17, 2008 are seeking a mandamus commanding the respondents to pay them compensation for acquisition of their lands under provision's of the Land Acquisition Act, 1894. In August, 1995 several notifications u/s 4(1) of the Land Acquisition Act, 1894 were issued by the Collector, Malda stating that the lands particulars whereof were recorded in the schedules to the notifications were likely to be needed "for a public purpose, viz, for Const. of retired Embankment of Farakka and to be taken by the Government at the public expense." It was stated in the notifications that the provisions of section 71 of the Land Acquisition Act, 1894 would be applicable to "the proceedings for the acquisition of the lands and that the provisions of section 5A would not apply. Copies of the notifications have been produced by the petitioners with the writ petition, and genuineness thereof has not been questioned by the respondents who have filed an opposition without saying anything pertaining to the section 4 notifications. According to the petitioners, lands owned by them were included in the schedules to the notifications, and this claim has remained undisputed.

2. The petitioners have produced with the writ petition copies of the several section 6 declarations published in the Official Gazette in 1996. Their claims have

not been disputed, and on the contrary, in the opposition, the respondents have admitted that the section 6 declarations were made, issued and published. While the case of the petitioners is that the collector took possession of the land, and that using the lands the embankment in question was constructed; the case sought to be made out in the opposition is that possession of the lands was not handed over to the requiring body, and that the lands were eroded by the raging flooded river,

3. Relying on an order of the Government dated May 16, 1997, Annexure R1 at P.7, Ms Mukherjee, counsel for the State, has contended that since the lands had been eroded by the raging flooded river before the acquisition proceedings could be concluded by making and declaring award and handing over possession of the lands to the requiring body, the petitioners are entitled only to solatium that the Government has decided to pay as a matter of grace. The question is whether the respondents can refuse compensation payable according to the provisions of the Land Acquisition Act, 1894.

4. It is not disputed that the order that May 16, 1997, has not been issued by the Government under any provision of the Land Acquisition Act, 1894. There is no provision in the Land Acquisition Act, 1894 under which a person otherwise entitled to compensation for the acquisition of his land may be given only solatium and not the compensation determined according to provisions of section 23 of the Act. Hence I am unable to accept the case of the respondents that since the proceedings for the acquisition of the lands could not be concluded before the lands were eroded by the raging flooded river, in law, the petitioners would not be entitled to compensation determined according to the provisions of the Land Acquisition Act, 1894.

5. The respondents have not come with a clear case in the opposition. When they were supposed to state all facts pertaining to the section 4 notifications, they have conveniently withheld the facts, and on the contrary, they have sought to make out a case that possession of the lands was not given to the requiring body. It is on the basis of such a case stated; in the opposition that Ms. Mukherjee has disputed the petitioners' claim that possession of the lands had been taken by the collector before the lands were eroded by the river. It seems to me that while making an attempt to make out such a case, the respondents overlooked the content of the documents produced by the petitioners with the writ petition clearly showing that the section 4 notifications were issued stating that the provisions of sub section (1) and (4) of section 17 of the Land Acquisition Act, 1894 would apply to the proceedings.

6. From the facts stated in the writ petition and the documents produced with it, it is evident that possession of the lands was taken by the collector, and that using them the appropriate department of the Government constructed the proposed embankment. The lands using which the embankment was constructed were eroded by the river only thereafter. It is, therefore, evident that in view of the provisions of section 17(i) the lands in question stood vested absolutely in

the, Government free from all encumbrances; Under the circumstances, in the absence of any statutory provision, even though compensation was not determined and award was not made by the collector, the State Government in which the lands stood vested could not withdraw from the proceeding or divest the lands. The petitioners lost their title to the lands the moment possession there of was taken by the collector,

7. The proceedings remained pending only for determination of compensation, and making and declaring the award by the collector. Instead of following these legal courses, by exercising an untraceable power the state government issued the order dated May 16, 1997 that is evidently ultra vires of the provisions of the Land Acquisition Act, 1894. The State Government has no authority to say that for the lands vested in it by operation of the provisions of section 17(1) of the Land Acquisition Act, 1894 it would pay the owners thereof only solatium, and not compensation duly determined by the collector. The loss of the lands has to be borne by the State that acquired the lands at its own peril; and it has no right to shift the consequences of the loss to the petitioners claiming to be the erstwhile owners thereof. I am, therefore, of the view that the collector must determine compensation, make and declare the award and pay compensation according to the award.

8. For these reasons, I allow the writ petition and order as follows. Within four weeks from the date of communication of the order the Collector Malda shall determine compensation for acquisition of the petitioners' lands make and declare the award and pay compensation according to the award. In the entire process he shall keep the petitioners involved. If the requiring body does not provide the requisite fund for payment of compensation, then the Secretary, Land and Land Reforms Department of the Government of West Bengal shall make the necessary fund available. The collector is ordered to pay the petitioners Rs. 20.000 costs. All payments shall be made within the time already mentioned. Urgent certified xerox of this order, if applied for, shall be supplied to the parties within three days from the date of receipt of the file by the section concerned.