

(2006) 08 CAL CK 0065
In the Calcutta High Court
Case No : Writ Petition 16788 (W) of 2006

Satyanarayan Mondal and Others	Vs	APPELLANT
State of West Bengal and Others		RESPONDENT

Date of Decision : 28-08-2006

Acts Referred:

Land Acquisition Act, 1894 — Section 11A, 17(3A), 17(4), 31, 4

Citation : (2007) 1 CHN 411

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Uttiya Ray, for the Appellant; Gita Mukherjee, D. Basak, Aniruddha Ray and Ratnesh Kumar Rai, for the Respondent

Judgement

Jayanta Kumar Biswas, J.—The petitioners are alleging that though possession of their land which was subject-matter of the land acquisition proceedings initiated by the Collector by publishing the requisite Section 4 notification dated November 16, 2001 had been taken by the authorities in 1998 even before initiating the acquisition proceedings, till date nothing has been paid to them on account of compensation.

2. From the Section 4 notification, I find that provisions in Section 17(4) of the Land Acquisition Act, 1894 were invoked, and that the competent authority directed that provisions in Section 5A would not apply to the land described in the schedule to the notification. On instructions Counsel for the State respondents submits that since no award was made in the acquisition proceedings, in terms of provisions in Section 11A the proceedings lapsed. She says that the award could not be made and declared by the Collector, since the requiring body did not make the fund available.

3. Since the National Highways authority has been enjoying the property as the ultimate beneficiary, I directed Advocate for the petitioners to give notice to that authority. In response to notice that authority has entered appearance. Counsel for that authority submits that the State Public Works Department was liable to

put in the requisite fund needed for paying the compensation. Since that authority is not a party in the present writ petition, I allow the oral prayer made by Counsel for the petitioners for its addition. Hence, I order that the National Highways shall be added in the case as the sixth respondent. The cause papers shall be amended at once.

4. This is unfortunate that the respondents caused a grave injustice to the petitioners who were not paid any amount in terms of provisions in Section 17(3A) of the Land Acquisition Act, 1894, though possession of the land had been taken by the respondents even before initiating the acquisition proceedings. Since the notification was issued invoking provisions in Section 17(4), the authorities were under the obligation to pay the part of the compensation in terms of provisions in that section. Plight of the petitioners did not end there.

5. The Collector failed and neglected to make and declare the award. The land was to vest in the State Government. At the present moment the land is being occupied and enjoyed by the National Highways authority, apparently illegally. Admittedly the acquisition proceedings lapsed. Since the award was not made and declared, the land never vested in the Government. Counsel for the respondents prayed for an order giving liberty to the authorities to initiate fresh acquisition proceedings. I think on the facts of the case that is the most fair way out that should be followed by the respondents, since the land is already in the possession and enjoyment of the National Highways authority.

6. For these reasons, I dispose of the writ petition ordering that within three weeks from the date of receipt of a copy of this order, the Collector, Burdwan shall issue a fresh notification u/s 4 read with Section 17(4) of the Land Acquisition Act, 1894. Needless to say that directions for dispensing with the requirements of provisions in Section 5A shall be incorporated in the notification. Since possession of the land had been taken by the authorities in 1998, within a fortnight from the date of publication of the Section 4 notification in terms of this order, the Collector shall pay to the persons entitled compensation in terms of provisions in Section 17(3A) of the Land Acquisition Act, 1894.

7. After following the necessary procedure, the Section 6 declaration shall be published within eight weeks from the date of publication of the Section 4 notification. Thereafter, the Collector shall make and declare the award, after making necessary enquiries involving the State Public Works department and the National Highways authority for determining which authority would be liable to put in the fund required for payment of compensation. The award shall be made and declared within the period mentioned in Section 11A of the Land Acquisition Act, 1894.

8. Immediately after declaring of the award the Collector shall take necessary steps for tendering compensation to the persons entitled by issuing requisite notice u/s 31 of the Land Acquisition Act, 1894. It is made clear that if the requiring body or bodies fail and neglect to put in the requisite fund for payment

of compensation, then the Land and Land Reforms Department of the State shall make the fund available for payment of compensation. There shall be for costs in the case.