
(1975) 02 CAL CK 0025
In the Calcutta High Court
Case No : Civil Rule No. 4318 (W) of 1974

Sm. Shanti Neogy

APPELLANT

Vs

1st Land Acquisition Collector, Calcutta and Another

RESPONDENT

Date of Decision : 05-02-1975

Acts Referred:

Land Acquisition Act, 1894 — Section 16, 31, 48, 55
Land Acquisition Rules — Rule 10

Citation : AIR 1975 Cal 415 : (1975) 2 ILR (Cal) 507

Hon'ble Judges : Chittatosh Mookerjee, J

Bench : Single Bench

Advocate : G.C. Basak, for the Appellant; P.K. Sen Gupta and Tapan Kumar Sen Gupta, for the Respondent

Judgement

Chittatosh Mookerjee, J.—On April 25, 1968 the West Bengal State Government issued a notification u/s 49 of the Calcutta Improvement Act, 1911 for acquisition of premises No. 81/1/1A, Canal Circular Road for a street scheme known as Scheme No. XIII-M.

2. The- petitioner has claimed that the First Land Acquisition Collector, Calcutta, had served a notice u/s 9 of the Land Acquisition Act upon her to appear before the First Land Acquisition Collector to state the nature of interest in the said land which was proposed to be acquired under the above scheme. On January 11, 1974 the First Land Acquisition Collector passed an Award for compensation for the acquisition of the aforesaid land. Thereafter the First Land Acquisition Collector served a notice u/s 12(2) of the said Act upon the petitioner in respect of the said Award and further intimated the petitioner that if she was willing to receive a sum of Rs. 70,000/90 p.

(Rupees seventy thousand and ninety paisa only) which had been awarded in her favour she might either appear personally or through agent to receive payment (vide annexure E to the petition).

3. According to the petitioner, she had appeared through an agent before the First Land Acquisition Collector on the 31st January, 1974 to receive payment of the above compensation money but the awarded sum was not paid on the said date. The said compensation awarded to the petitioner has not been yet paid. Accordingly, the petitioner has filed this writ application for commanding the respondents to perform their statutory duties by making payment of the said awarded sum to her in terms of the notice u/s 12(2) of the Act.

4. The respondents in paragraph 5 (vi) of their affidavit in opposition by Nirmal Chandra Roy have set out the reasons for not making the payment to the petitioner. According to the deponent to the said affidavit in opposition, the Calcutta Improvement Trust had informally informed the Land Acquisition Collector, Calcutta, that they were reviewing the entire Scheme XIII-M at the instance of the Calcutta Metropolitan Development Authority. Secondly, an alleged vigilance enquiry was pending regarding suspected malpractices adopted in the matter of claims on the basis of which assessment and Awards of compensation were made. Lastly, the deponent to the affidavit in opposition has stated that although Awards have been made the petitioner and other occupants of the premises have not vacated the premises. For these reasons the Land Acquisition Collector did not consider it expedient to make payment of compensation before getting actual possession of the premises with structures intact.

5. The First Land Acquisition Collector in the matter of payment of the sum awarded in the present case must act in accordance with the provisions of Land Acquisition Act, 1894 read with the Rules and Executive Instructions of the Government of West Bengal. Sub-section (1) of Section 31 of the Act provides that on making an Award u/s 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the Award, and shall pay to them unless prevented by some one or more of the contingencies mentioned in the next Sub-section of Section 31. Sub-section (2) mentions the three circumstances in which the Collector instead of making payment shall deposit the amount of compensation in court. The circumstances are--- (a) if the awardees do not consent to receive it, (b) if the person concerned was not competent to alienate the land, and (c) if there be any dispute as to the title to receive the compensation or as to the apportionment of it. But a person interested, under first proviso to Sub-section (2), may receive payment under protest as to the sufficiency of the amount. According to the petitioner, her application u/s 18 for making a reference was still pending before the Land Acqn. Collector, Calcutta. Therefore, she had prayed that the payment may be made to her under protest. In the instant matter, it is nobody's case that the petitioner had a limited interest or there was any dispute about apportionment. Therefore the Sub-section (3) of Section 31 is not attracted.

6. Rule 10 of the Rules issued by the Government of West Bengal u/s 55 of the Land Acquisition Act, 1894 inter alia provides that in giving notice of the Award

under Sub-section (2) of Section 12 and tendering payment u/s 31(1) to such of the persons interested as were not present personally or by representative when the Award was made the officer shall require them to appear personally or_ by representative by a certain date to receive payment of the compensation awarded to them. If they do not appear and do not apply for a reference to the civil court u/s 18 the officer shall after any further endeavour to secure their attendance cause the amounts due to be paid into the treasury as revenue deposits payable to the persons to whom they are respectively due and vouched for in the form (marked "E"). The Officer is also required to give notice to the payees of such deposits. When the payees ultimately claim payment of sums placed in deposit, the amounts will be paid to them in the same manner as ordinary revenue deposits. Whenever payment is claimed through a representative whether before or after deposit of the amount awarded such representative must show legal authority for receiving compensation on behalf of the principal. Presumably in accordance with the above Rule 10, the First Land Acquisition Collector in his notice u/s 12(2) had informed the petitioner that on her failure to promptly receive payment interest will cease on the awarded sum. The executive instructions regarding payment of compensation are contained in Chapter X of the Land Acquisition Manual, 1951. Paragraphs 92-93 and 94 respectively provide for conditions under which payment can be made, competence to receive compensation money and payment into treasury as revenue deposit; paragraph 95 prescribes the methods of payment; paragraph 99 of the said executive instructions expressly provides that the Collector should see that there was no avoidable delay in the matter of payment of compensation.

7. I have set out the above provisions at some length to indicate that the reasons put forward by the First Land Acquisition Collector in his affidavit in opposition filed in this case do not come within the four corners of the said provisions of the Act, Rules and executive instructions. The First Land Acquisition Collector is under a statutory duty to make payment of the sum awarded in accordance with law to the persons interested and cannot withhold payment on extraneous grounds. Mr. Sen Gupta, learned Advocate for the respondents, has drawn my attention to Section 16 of the Land Acquisition Act which inter alia provides that even after an Award is made the Collector may take possession of the land which shall thereupon vest absolutely in the Government free from all encumbrances. Mr. Sen Gupta pointed out that in case the Government ultimately does not take possession of the land acquired under the aforesaid scheme, the petitioner will not be entitled to receive any compensation. But, Section 16 does not empower the State Government to inordinately and indefinitely delay its decision whether or not possession should be taken and whether the acquisition should be proceeded with. It may be also pointed out that Section 48(1) of the Land Acquisition Act provides that except in cases provided in Section 36, the Government shall be at liberty to withdraw from acquisition any land of which possession had been taken. Under Sub-section (2) when the Government so withdraw the Collector is required to determine the

amount of compensation due for the damage suffered by the owner in consequence of service of notice or of any proceeding thereunder and shall pay such compensation to the person interested. Therefore, the payment of the compensation which was already tendered to the petitioner cannot be indefinitely withheld and the Government should, at a very early date, decide whether it proposes to withdraw the acquisition proceedings.

8. Mr. Sen Gupta himself did not overemphasize the fact that an alleged Vigilance enquiry was pending in the matter of assessment of compensation. It is hardly necessary to say that such Vigilance enquiry if not already concluded ought to be expeditiously finished. Further such enquiry cannot be a ground for denying payment of compensation to those who are not suspected of any malpractice or irregularity. It is also up to the Government to promptly take possession of the acquired lands in order to avoid damage to the structures in question. If it itself inordinately delays taking over of possession the persons in whose favour compensation has been awarded cannot be deprived of the award money. It may be noted that according to the notice given by the First Land Acquisition Collector the interest on the Award sum was likely to cease in case the compensation money was not withdrawn promptly. Therefore, the respondents are not entitled to withhold payment of the sum Awarded and at the same time suspend payment of interest of the said sum on the ground of delay on the part of the persons interested in receiving such payment. In the instant case, therefore, I propose to direct the respondents to discharge their statutory duties in the matter of payment of compensation money awarded in accordance with law within the period mentioned hereinafter.

In case the land in question is released from acquisition, obviously, the question of payment of the awarded sum should not arise.

9. I accordingly make the Rule absolute in part. Let a writ of mandamus issue commanding the respondents to dispose of the application filed by the petitioner for receiving compensation money within a period of four months from this day in terms of the notice u/s 12(2) of the Land Acquisition Act, dated January 18, 1974 and in accordance with law.

10. There will be no order as to costs.