

(2015) 08 SC CK 0142

In the Supreme Court Of India

Case No : C.A. Nos. 6627-6628 of 2015 (Arising out of SLP(C) Nos. 27425-27426 of 2012) and C.A. Nos. 6629-6630 of 2015 (Arising out of SLP(C) Nos. 15580-15581 of 2013)

State of West Bengal and Others

APPELLANT

Vs

Aziman Bibi and Others

RESPONDENT

Date of Decision : 27-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 11, 11A

West Bengal Land (Requisition and Acquisition) Act, 1948 — Section 4, 6, 8

Citation : (2015) 9 SCALE 585

Hon'ble Judges : T.S. Thakur, J;Kurian Joseph, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Leave granted. These appeals arise out of an order dated 24th August, 2011 passed by a Division Bench of the High Court at Calcutta whereby M.A.T. No. 464 of 2011 and M.A.T. No. 279 of 2011 filed by land-owners-Aziman Bibi and others have been allowed and a common order dated 11th November, 2010 passed by a learned Single Judge of that Court set aside with the direction that the compensation payable to the land-owners shall be determined by the special officer appointed for that purpose by the High Court.

2. A large extent of land, it appears, was notified for acquisition in terms of a notification dated 17th June, 1958 Under Section 4 of the West Bengal Land Development and Planning Act, 1948. The acquisition was meant for the public purpose of settlement of immigrants. Among the plots notified for acquisition Under Section 4 of the Act was Plot No. 785 in which Aziman Bibi and others - Respondents in SLP(C) No. 27425-27426 of 2012 claim to own an extent of 0.11 decimal only. A declaration Under Section 6 of the Act followed on 18th December, 1958 in which Plot No. 785 was omitted from the acquisition proceedings. It is common ground that an award based on Section 6 notification

was made by the Collector concerned on 21st March, 1967. Nearly two years after making of the award, the State Government appears to have realised that there was an error in the declaration issued Under Section 6, inasmuch as Plot No. 785 and two others had been erroneously omitted from the said declaration. The error was sought to be corrected by the government by issuing an errata on 12th December, 1968 by the State Government, purporting to bring back the omitted plot No. 785 for acquisition. What is significant is that despite the issue of the said errata the competent authority did not make any award or determine compensation for payment to the land-owners. Possession of Plot No. 785 and other plots, covered by the errata aforementioned, was nevertheless taken over from the land-owners on 24th November, 1980. It is not in dispute that after taking over the possession of the land, the same was utilised for the public purpose for which it had been acquired, namely, allotment to immigrants for their rehabilitation.

3. It was in the above backdrop that two writ petitions, namely, W.Ps. No. 17572 (W) of 2006 and 29102 (W) of 2008 were filed by the land-owners before the Calcutta High Court in which the land-owners inter alia prayed for a mandamus directing the Respondents - State to determine the compensation for their land and publish an award. These writ petitions were heard and disposed off by learned Single Judge of the High Court by a common order dated 11th November, 2010, with the following directions:

"In view of the above, I direct the District Magistrate and Collector, North 24 Parganas to take a decision with regard to passing award and paying compensation to the Petitioners in connection with the acquisition of the said plot of land within a period of three months from the date of communication of this order by passing a reasoned order treating these writ applications as the representation of the Petitioners and after giving opportunity of the hearing to a representative of the Petitioners.

These writ petitions are disposed of accordingly."

4. Aggrieved by the order passed by the Single Judge, the land-owners filed appeals which were heard and disposed off by a Division Bench of the High Court in terms of the judgment and order impugned before us.

5. The High Court, it is evident from a plain reading of the order passed by it, recorded a finding that the process of acquisition initiated by the competent authority had not been taken to its logical conclusion and that the officers concerned had derelicted their duties and caused loss to the State exchequer because of such dereliction. The High Court accordingly directed an enquiry into the lapses committed by the officers concerned and action against those responsible. Having said that the High Court modified the order passed by learned Single and disposed off the appeals filed before it with the following direction:

In order to quantify the damage done, we appoint Mr. Debojyoti Datta, Bar

Library Club, a practising advocate of this Court, special officer. He will take evidence of appearing parties asking to provide the market value prevailing on the date of taking possession of land, then he shall come to fact finding together with interest at the fixed deposit rate as allowed from time to time by Nationalized Bank. This quantification shall be completed within a period of three months from date of communication of this order. The Special Officer, however, before providing shall verify on receipt of authenticated document that the Appellants are owner of the land. Mr. Dutta shall be paid remuneration assessed at 300 G.Ms., per day sitting irrespective of hours not less than two hours per day. He will be entitled to take the assistance of stenographer and clerk. Mr. Panda's client will bear the remuneration of the special officer at the at the first instance. However, this payment shall be added to the claim. It would be open for Mr. Dutta to call for documents from any authority and if required, he shall call for records from Registry Office which shall supply the market value of the land for payment of stamp duty in that area at the time when the possession of the land was taken. If the payment is made on quantification of damages by the government, the right, title and interest of the land will pass on to the Government on execution and registering conveyance and the Government will regularise the ownership in favour of any third party, if there be any.

Both the appeals are, thus, disposed of.

6. The present cross appeals have been filed by the State of West Bengal and the landowners challenging the aforementioned judgment and order of the Division Bench of the High court, as already noticed earlier.

7. We have heard learned Counsel for the parties at some length and perused the orders passed by learned Single Judge and the Division Bench of the High Court. The material facts are not in dispute. It is not in dispute that the land in question was notified for acquisition Under Section 4 of the State enactment. It is also not in dispute that Section 6 declaration issued under the State enactment did not include Plot No. 785 in which the writ Petitioners-landowners claimed ownership to the extent of 0.11 decimal. It is also not disputed that even when an errata had been issued by the State Government correcting the so-called erroneous omission from the declaration Under Section 6 in relation to Plot No. 785, no award was made by the competent authority till 2011 when an award purporting to be one under the Land Acquisition Act was made pursuant to the direction issued by the High Court. There was however no question of making any such award after the acquisition proceedings had lapsed nor could the High Court direct the making of an award when in law the same could not be made.

8. The short and perhaps the only question that fell for consideration before the High Court in the above backdrop was whether the proceedings initiated Under Sections 4 and 6 of the said Act had lapsed by reason of failure of the competent authority to make a proper award within the time stipulated for the purpose for once it was held that the proceedings had indeed lapsed legal consequence would follow that would not allow even a writ court to nullify such consequences.

The Division Bench has, as noticed earlier, held that the proceedings not having culminated in the making of an award, the same had lapsed. That conclusion is in our opinion legally unexceptionable. It is true that the State enactment does not provide for a time limit within which the Collector must make and publish an award but that does not make any material difference in the light of Section 8 of the State enactment which applies the provisions of the Land Acquisition Act, 1894 to the proceedings for their completion including making of an award and determination of the compensation after the declaration Under Section 6 is published. Section 11-A of the Land Acquisition Act, 1894, added to the statute in September 1984, provides that the award shall be made Under Section 11 of the said Act within a period of two years of the declaration Under Section 6 of the Act and if no award is made within the said period, the entire process for acquisition shall stand lapsed. In the case at hand the acquisition proceedings had started before the insertion of Section 11-A in the statute book. Proviso to Section 11-A would therefore apply and permit the making of an award within a period of two years from the date the Land Acquisition (Amendment) Act, 1984 came into force. The said amendment came into force on 24th September, 1984. In terms of the proviso, therefore, the award in respect of the acquisition at hand could have been made till September 1986, by the latest. No such award was however made till September 1986 or at any time even thereafter till 2011, when the Collector did so, pursuant to the direction of the High Court. That award is on the face of it non-est in the eyes of law.

9. The net effect of the above is that the entire process commencing with the publication of the Notification Under Section 4 and declaration Under Section 6 had lapsed and no award could be lawfully made or directed to be made by the High Court in exercise of its power Under Article 226 of the Constitution of India. Inasmuch as learned Single Judge directed a decision to be taken by the competent authority it could only mean that the competent authority would be free to initiate the process of acquisition rather than taking the lapsed proceedings further by making an award beyond the statutory period. Inasmuch as the Division Bench directed compensation to be determined that too by appointing a special officer for that purpose, it fell in a palpable error. There is no juristic principle which the Division Bench of the High Court could call in aid in a case like the one at hand and resurrect and resuscitate process/proceedings that had lapsed. The High Court appears to have devised a unique procedure by appointing a special officer for determination of compensation in proceedings that were legally non-est. We find it extremely difficult to approve of such an approach. In the result, we allow these appeals, set aside the orders passed by the High Court with the direction that since the land owned by the land-owners-writ Petitioners has already been utilised, pursuant to the initial declarations, the State shall take steps for notifying the acquisition once again and determine compensation in accordance with law expeditiously but not later than six months from the date a copy of this order is made available to it. No costs.