
(2020) 01 CAL CK 0008

In the Calcutta High Court

Case No : Review(RVW) No. 21 Of 2019, Civil Application (CAN) No. 987 Of 2019 In Writ Petitions (WP) No. 26160 (W) Of 2016

State Of West Bengal & Ors

APPELLANT

Vs

Ramkrishna Sahoo & Ors

RESPONDENT

Date of Decision : 03-01-2020

Acts Referred:

Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 —
Section 26, 30, 64, 80

Citation : (2020) 01 CAL CK 0008

Hon'ble Judges : Subrata Talukdar, J

Bench : Single Bench

Advocate : Ayan Banerjee, Debosree Dhamali, Amit Kumar Pan, Manish Kumar Das

Final Decision : Disposed Of

Judgement

Subrata Talukdar, J

Party/parties is/are represented in the order of their name/names as printed above in the cause title.

Mr. Banerjee, learned State Counsel, assisted by Ms. Dhamali, learned Advocate, appears in support of RVW 21 of 2019, which is an application seeking review of the order of the Hon'ble Single Bench dated 2nd of May, 2017 in the mother writ petition, being WP 26160(W) of 2016.

Mr. Banerjee also appears in support of CAN 987 of 2019, which is an application for condonation of delay in filing RVW 21 of 2019. However, Mr. Banerjee takes the stand that in filing RVW 21 of 2019 seeking review of an order passed in a writ petition, the limitations of delay as envisaged by the Limitation Act shall not apply.

In this connection, learned State Counsel relies upon the judgement reported in 2008(1) CHN Page-442 in Re: Maruti Real Estate Pvt. Ltd. & Anr. -vs- Life

Insurance Corporation of India & Ors..

Next, arguing on the merits of the Review Application, Mr. Banerjee submits that the review has become necessary since the Hon'ble Single Bench vide its order dated 2nd of May, 2017 came to the view that the Award under challenge in the writ petition was made under the Land Acquisition Act, 1894 (for short Act-1) and not under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short the 2013 Act).

Producing documents in the nature of Rate Proposals as well as the calculation of the Award, Mr. Banerjee points out that it shall be palpable from the said above referred documents that the Award was actually made under 2013 Act and not under Act-1 of 1894 as erroneously perceived by the Hon'ble Single Bench.

Learned State Counsel points out and, in the opinion of this Court correctly so at this stage, that in the event the perception recorded in the order dated 2nd of May, 2017 is allowed to persist, the Award declared under the 2013 Act shall never be executable qua the petitioners.

In support of the above recorded proposition, Mr. Banerjee takes this Court to the break up of the Rate Proposal which includes market value, 100% solatium etc. which, it is submitted, are all features of the Award made under the 2013 Act.

Mr. Pan, learned Counsel appearing for the writ petitioners and opposing RVW 21 of 2019 and CAN 987 of 2019(supra), takes the stand that the Award under the 2013 Act must be holistically construed. Mr. Pan contends that the Hon'ble Single Bench vide its order dated 2nd of May, 2017 clearly intended the acquisition proceedings to be completed in terms of the 2013 Act and no part thereof to fall within Act-1 of 1894.

Mr. Pan further contends that assuming for the sake of argument that the Award has been calculated in terms of the 2013 Act following, inter alia, Sections 26,30 and 80 thereof, the procedure for depositing the Award with the Prescribed Authority under Section 64 of the 2013 Act has not been followed which, would deprive any individual of a meaningful compensatory relief.

Having heard the parties and considering the materials placed, at this juncture this Court notices the clear intention of the Hon'ble Single Bench vide its order dated 2nd of May, 2017(supra) entitling the petitioners to receive compensation (emphasis supplied) under the provisions of the 2013 Act. Therefore, to the mind of this Court, the intention of the Hon'ble Single Bench that the petitioners receive compensation under the 2013 Act makes it legally permissible for the State-Respondents to kick in the calculation of the compensation amount from the relevant applicable stages/provisions of the 2013 Act.

Again, to the mind of this Court, it would be wholly unnecessary to give effect to the order dated 2nd of May, 2017, to insist on putting the clock back for initiating proceedings under Act-1 of 1894, so long as the compensation/Award is

computed under the 2013 Act.

Accordingly, this Court is of the view that the view taken by the Hon'ble Single Bench dated 2nd of May, 2017 are not sustained by the stand taken by learned State Counsel since it is claimed by the State that it is the 2013 Act and not Act-1 of 1894 which has been followed in calculating the Award.

Accordingly, the issue raised in RVW 21 of 2019 to expunge such observations made in the order dated 2nd May, 2017(supra) in the light of the materials produced today, is found to be prima facie acceptable to this Court.

RVW 21 of 2019 is thus admitted for adjudication.

Cause shown in CAN 987 of 2019 is found to be sufficient and RVW 21 of 2019 also stands restored to its form and number.

CAN 987 of 2019 stand accordingly disposed of.

However, learned State Counsel shall place on record by way of a supporting Affidavit to RVW 21 of 2019, the application of mind by the Acquiring Authority/ the State-Respondents with regard to the detailed application of the 2013 Act qua the Award in issue as well as the avenue open to the petitioners for accepting such Award and also claiming enhancement thereof.

Let such Affidavit be filed within a period of three weeks from this date; reply within a week thereafter.

Let the matter return next under the heading "For Orders" in the Combined Monthly List of February, 2020.

Documents produced in Court today be retained with the record.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.