

(2022) 09 CAL CK 0018
In the Calcutta High Court

Case No : M.A.T. No. 725 Of 2022, IA No: C.A.N. 1, 2 Of 2022

State Of West Bengal & Ors.

APPELLANT

Vs

Zaharun Sk @ Bibi & Ors.

RESPONDENT

Date of Decision : 06-09-2022

Acts Referred:

Limitation Act, 1963 — Section 5

Land Acquisition Act, 1894 — Section 4(1), 6, 12(2)

Citation : (2022) 09 CAL CK 0018

Hon'ble Judges : Arijit Banerjee, J; Rai Chattopadhyay, J

Bench : Division Bench

Advocate : Susovan Sengupta, Subir Pal, Partha Pratim Roy, Anirban Das

Final Decision : Disposed Of

Judgement

Rai Chattopadhyay, J

CAN 1 of 2022

The appellant has filed an application being no. CAN 1 of 2022 under Section 5 of the Limitation Act, 1963. In the said application the appellant has prayed for the relief that delay of 878 days, in filing the appeal may be condoned and the appeal may be admitted.

The appellant has stated inter alia that it being a department of Government of West Bengal, there has been some delay due to the departmental processes, to prepare the appeal papers and by this way the delay of 878 days occurred.

The appellant had served copy of the application to the respondents. Affidavit of service is kept with the record.

The reason shown for delay in filing the present appeal being sufficient, appellant's prayer under the said application, i.e, CAN 1 of 2022 is allowed.

Delay in filing the present appeal of 878 days is condoned. Appeal is admitted.

CAN 1 of 2022 is disposed of.

MAT 725 of 2022

with

CAN 2 of 2022

(1) The appeal and the application for stay of operation of the impugned order, are taken up.

(2) The State of West Bengal is the appellant challenging the judgment and order dated 13th December, 2019, passed by the Ld. Single Judge, in W.P. No. 6672 (w) of 2019. The said writ petition was filed by the present respondent No.1 Zaharun Sk @ Bibi, challenging the alleged inaction of the appellants in considering the written representation of the writ petitioner/respondent dated 10th September, 2018.

(3) The matter relates to acquisition of land belonging to the predecessor in interest of the writ petitioner/respondent, namely Sk. Giyassuddin, by the State authorities. An award dated 30th November, 2015 was made and compensation was paid to him to the tune of Rs. 2,23,242/- for the acquired land. According to the appellant, the land owner died within a very short span of time from the date of issuance of notice to him and did not have the opportunity to raise objections against the assessment of land value. The writ petitioner/respondent says that the land was comprised of construction and valuable trees, which were not taken into consideration by the appellant authorities, while assessing compensation for the acquired land.

(4) Factual background of the case is required to be narrated in a nut-shell, which is as follows :

(i) Sk. Giasuddin was the owner of and in possession of plot No.981 at Mouza – Baliara, under Police Station Fezergunj Costal, in the district South 24 Parganas. His name appeared in the record of rights as the owner of the said plot of land.

(ii) The Government issued a notification under section 4(1) of the Land Acquisition Act, 1894 on 19th February, 2013 and the declaration notice under section 6 of the Land Acquisition Act, 1894, on 24th October, 2013, in respect of the said plot of land, along with others. On 10th February, 2016, a notice was issued to the said land owner under section 12(2) of the said Act, asking him to remain present on 23rd February, 2016, for accepting the award money. According to the appellants, the land owner was neither present nor represented on that date before the authority. It transpired that in the meantime on 20th February, 2016, the said land owner, Giasuddin died.

(iii) The death of the original land owner prompted his successor, i.e, the writ petitioner/respondent to present her written representation dated 10th September, 2018, indicating the infirmities in calculation of compensation and requesting the authority to re-enter the whole exercise of calculating

compensation after taking into account all relevant factors and determinants and to calculate the amount of compensation in terms of the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

(iv) Writ petitioner/respondent was aggrieved that her said representation has ever remained not considered and disposed of, by the appellant authorities, thereby jeopardizing her rights to the Constitutional safeguards as well as principles of natural justice. For remedy of her grievance she filed the writ petition as mentioned above.

(5) The impugned order dated 13th December, 2019, may also be reproduced here, as follows :

"Heard learned advocates appearing for the parties.

It is the grievance of the petitioner is that he has made a representation dated 10th September, 2018 being Annexure P-5 at page 29 to the writ petition before the respondent no. 4 the Special Land Acquisition Officer, South 24 Parganas, for compensation in connection with the structure and tress over the land in question as appears from the said representation and the same has not been considered by him till date.

Considering the submission of the parties, this writ petition is disposed of by directing the respondent no. 4, to consider and dispose of the aforesaid representation dated 10th September, 2018 in accordance with law and by passing a reasoned and speaking order after giving opportunity of hearing to the petitioner or his authorized representatives within eight weeks from the date of communication of this order and to communicate his decision to the petitioner within two weeks thereafter.

With the aforesaid direction, the writ petition W.P. 6672 (W) of 2019 is disposed of."

(6) Let us now dwell on the arguments advanced by the respective parties. Mr. Sengupta, appearing for the appellants has made very short and curreted submission that, the original land owner, during his lifetime never participated in the proceedings during the pre-award period, nor did he appear or was represented on the stipulated day, in response to the appellant's notice under section 12(2) of the 1894 Act. According to him the respondent is now estopped from raising any grievance whatsoever, against the assessed compensation. According to him, the appellants have not erred in not considering the representation of the respondent No.1, which is not maintainable even otherwise and that by dint of appellant's action, no right of the respondent/writ petitioner has been infringed. The appellants have challenged the impugned order dated 13th December, 2019, for the reason that after due process of law was exhausted, there would be no relief available to the respondent/writ petitioner, either in law or equity, including consideration of her representation made on the

self same issue. Prayer has been made for setting aside the order impugned.

(7) On behalf of writ petitioner/respondent, strong objections have been grounded. Mr. Partha Pratim Roy appearing for her, has categorically submitted that after issuance of notice to original land owner by the authorities under section 12(2) of the 1894 Act and three days before the scheduled date of appearance, the said person died. Hence, neither he could get any opportunity to raise any objection against the award nor the respondent's representation was ever paid any heed to, by the authorities. He submits that the plot of land owned by the predecessor of his client used to comprise of a construction as well as several valuable trees, which factor has been ignored in assessing the compensation. He submits that his client's right to the said property has been taken away without compensating her adequately, thereby depriving her of the valuable rights guaranteed under the Constitution and also that by not considering her representation, the authorities have also violated the principles of natural justice. He supports the impugned order and seeks affirmation of the same.

(8) As discussed earlier, in respect of the concerned land, notice under section 4(1) was issued and declaration under section 6 of the Land Acquisition Act 1894, were made on 19th February, 2013 and 24th October, 2013 respectively. Thereafter on 10th February, 2016, notice under section 12(2) of the said Act was issued to the owner. All this was done during the lifetime of the original owner of land, Sk. Giasuddin. Proceedings were started being L.A. Case No. 4/31 of 2012-13 dated 24th October, 2013. There is no record that the original land owner ever participated in the said proceedings. Thus, he must be deemed to have accepted the steps taken by the authority at all stages of the acquisition process. However, he died on 20th February, 2016, i.e, before the scheduled date of disbursement of awarded money, i.e, 23rd February, 2016. It is a fact admitted that the appellant and other legal heirs of the original land owner have accepted the awarded money to the tune of Rs.2,23,242/-. No record is available before this court to show that either the compensation amount arrived at by the authorities was objected to on whatsoever ground or that the said legal heirs have accepted the compensation upon reserving their rights and contentions as regards the same. Under such circumstances, upon disbursement of the compensation to the land owner/legal heirs, the entire proceeding has attained finality and all parties thereto are bound by the final outcome of the said proceedings. Therefore, there is no scope for the appellant to espouse the self same cause again, after about two and half years, by way of presenting her written representation dated 10th September, 2018, before the authorities. The respondent / writ petitioner has endeavored to persuade this court about the innocuousness of her prayer that her written representation should only be considered by the appellant authority. However, in absence of her making up a strong prima facie case, she could not even pray for consideration of her prayer as a matter of right. We find that the appellants are apt in arguing that the respondent is estopped from agitating any grievance regarding the issue which

has reached its finality. For the same reason, there would be no ground for consideration of the prayer of the respondent under the 2013 Act, as mentioned above.

(9) Ld. Single Judge appears to have erred in failing to consider the case in its proper perspective. It has not been considered that the land acquisition proceedings have reached its finality. Also the order impugned is silent about the unfavorable effect of the time gap in making the representation by the respondent, which has rendered the same to be construed as an after thought. In our view, consideration of representation should not be mechanically ordered, unless such prayer is backed by strong prima facie material to show illegality in the actions of the authority or prejudice or injury suffered by the relief seeker, and such prayer is made with promptitude, which factors are absent in this case.

(10) For the reasons aforestated, the present appeal is allowed. As the respondent/writ petitioner is not found to be entitled to any relief as prayed for, the impugned order dated 13th December, 2019, is set aside.

(11) Interim order, if any, stands vacated. Connected application, if any, is also disposed of.

(12) Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.