

(2018) 10 CAL CK 0061

In the Calcutta High Court

Case No : M.A.T No. 1260 Of 2017, C.A.N. No. 7805 Of 2017

**State of West Bengal & Ors @APPELLANT@Hash M/s. Santi Ceramics
Private Limited & Anr**

Date of Decision : 11-10-2018

Acts Referred:

Land Acquisition Act, 1894 — Section 5A, 5A(2)
Transfer of Property Act, 1882 — Section 108(h)
Constitution of India, 1950 — Article 142, 226

Citation : (2018) 10 CAL CK 0061

Hon'ble Judges : Debasish Kar Gupta, J;Shampa Sarkar, J

Bench : Division Bench

**Advocate : Abhrotosh Majumder, Chandi Charan De, Saktinath Mukherjee,
Sanat Kumar Roy, Kishore Mukherjee**

Final Decision : Dismissed

Judgement

Shampa Sarkar, J. :

1.This Intra-Court appeal has been preferred against the judgment and order dated April 24, 2017 passed by a learned Single Judge of this court in

W.P No.29621 (W) of 2016. Â

2. While deciding the application for stay of operation of the judgment and order impugned, we have decided to hear out the appeal itself on the consent of the parties.

3. The respondent no. 1 being a company incorporated under the Companies Act 1956, (hereinafter referred of the writ petitioner), filed an application under Article 226 of the Constitution of India (hereinafter referred as the writ petition), for a direction upon the District Magistrate and Collector, Hooghly to restore the possession of the land of the writ petitioner measuring 8.76 acres in Mouja Khaser Bheri, Police Station:-Singur, District:-

Hooghly along with the structures situated thereon and also to pay compensation for the delay in handing over the said land along with the structures.

4. The learned Single Judge by the judgment and order impugned directed the District Magistrate, Hooghly to deliver possession of the land and

structure as described in the foregoing paragraph within a period of 6 weeks from the date of communication of the said order but, did not allow the prayer for compensation.

5. Aggrieved by the said judgment and order impugned, the appellants who were the respondent nos. 1 and 3 to 5 in the writ petition have preferred

this appeal.

6. The first ground urged by the appellant was that the learned Single Judge erred in interpreting the judgment of the Apex Court in the case of Kedar

Nath Yadav vs. State of West Bengal, reported in AIR 2016 SC 4156. According to the learned Additional Advocate General, the Apex Court by

setting aside the acquisition of lands including the lands of writ petitioners, which had been acquired for setting up a small car project at Singur by Tata

Motors Limited (TML), had directed that only land owners/cultivators should be returned their lands whereas, the writ petitioner being a

manufacturing unit, should be treated as a business house and should not be given the benefit of the said judgment. He submitted, that from paragraph

68 of the judgment in Kedar Nath Yadav (supra), it would be amply clear that the Apex Court had consciously made a distinction between land

owners/cultivators and industrial/manufacturing units and did not include industrial units along with the expression "land owners/cultivators" while

issuing the directions upon the Government of West Bengal.

7. Secondly, the learned Additional Advocate General argued, that the acquisition proceeding was set aside by the Apex Court on the ground of

illegality in the procedure followed for such acquisition because in most cases section 5-A (2) of the Land Acquisition Act, 1894 (hereinafter referred

to the said Act, 1894) had not been complied with, as some of the objections filed by the cultivators/land owners and industrial units had not been

disposed of after affording an opportunity of being heard to such objectors but, insofar as the writ petitioner was concerned its objection was

considered by following the principles of natural justice and adequate compensation was paid to the writ petitioner for the structures as well.

8. He further submitted, that after the acquisition, TML made alterations and changes to the structure on the writ petitioner's land and as such the structures should be demolished before the land is returned to the writ petitioner as the state had a right over the same.

9. Mr. Shaktinath Mukherjee, learned Senior Advocate appearing on behalf of the writ petitioner submitted, that once the acquisition proceedings had been set aside the land as it stood, should revert back to the land owners.

10. He further submitted that the acquisition was set aside not only on the ground of violation of the provisions of section 5-A of the said Act but, also on other grounds including illegality in the award of compensation. According to him, the said land of the writ petitioner along with the structures had been acquired in the acquisition proceedings under the said Act and once the acquisition had been set aside and the project of TML had been abandoned, the land along with the structures situated thereon should be returned to the writ petitioner. He further urged that the definition of "land" included anything attached to the land, including buildings.

Mr. Mukherjee contended, that the state respondents had failed to deliver possession of the land with the structures despite specific directions by the Apex Court in Kedar Nath Yadav (supra) in respect of all landowners/cultivators which included the writ petitioner and other manufacturing units as well. He referred to section 108 (h) of the Transfer of Property Act, 1882 and submitted that once TML had abandoned the property without removing the structures which it had subsequently changed and altered the said land along with the structures would revert back to the writ petitioner and the State of West Bengal could not claim any right over such structures.

11. Mr. Mukherjee finally referred to the directions issued by the Apex Court in Kedar Nath Yadav (supra) and urged that in the decision, procedural irregularity and other illegalities in acquisition proceeding had been elaborately discussed and although there were separate opinions on certain issues but, finally the Apex Court set aside the entire acquisition proceeding declaring the same to be null and void and by a concurring judgment directed the State of West Bengal to conduct a survey and identify the mouzas of lands acquired along with the maps in order to demarcate the respective portions of lands of the affected persons so that the same could be returned to the landowners/cultivators. Such possession of land he submitted, was

directed to be restored to the land owners/cultivators within 12 weeks from the date of receipt of the judgment and order. According to him, the Apex

Court further directed that the compensation which had been paid should not be recovered by the State Government and those land

owners/cultivators who had not withdrawn the compensation were permitted to withdraw the same which were deposited either with the Land

Acquisition Collector or with the court.

12. He relied upon a decision of the Apex Court in *Laxmi Devi vs. State of Bihar and Others* reported in (2015) 10 SCC 241, for the proposition that

the directions of the Apex Court was the ratio of the judgment and not every observations made by it was a binding precedent.

13. We have heard the parties at length and have considered the rival contentions of the parties.

For proper adjudication of the issues involved in this appeal, we refer to paragraphs 119 to 121 of the judgment in *Kedar Nath Yadav (supra)* which

read as follows:-

Relief

119. After acquisition of the land by WBDIC it granted lease to TML and handed over possession. Ultimately, the TML could not start operations as

is apparent from its letter dated 28.9.2010. They had removed their equipment and machinery also. Though the project would have been beneficial,

however in the circumstances it has moved out as environment could not be created for normal working of the plants as mentioned in letter of TML.

The State Government has taken possession of the land from TML and TML has abandoned its project in the State of West Bengal and has shifted it

to the State of Gujarat.

120. Possession has been taken ten years before from the landowners. In a case where there are no sale-deeds evidence forthcoming compensation

is awarded to land-owners on annualized yield of 10 years as held by this Court in *Special Land Acquisition Officer v. Virupax Shankar Nadagouda*

(1996) 6 SCC 124 and *Collector, Land Acquisition v. Gana Ram Dhoba* (1996) 1 SCJ 15. In the facts of this case it would be appropriate to direct

that land is given back to all land owners since they have been deprived of the usufruct of the land for a decade as such the compensation paid to

them shall not be recovered. They are permitted to retain it or claim it in full and

final settlement of claim towards damages for deprivation of use of their land etc.

121. In view of determination on question numbers 3, 4, and 5 due to violation of the provisions contained in section 5A of the Act, in the facts of the case to do complete justice between the parties in exercise of power under Article 142 of Constitution the entire proceeding pertaining to land acquisition are quashed and case is not relegated in the instant case to the stage of inquiry under section 5A of the Act as ordinarily resorted to, as the very purpose of acquisition has failed and directing an inquiry afresh would be an exercise in futility. The land shall be given back to the land owners and compensation if any paid to them shall not be recovered from them those who have not collected it are free deprivation of possession for ten years.â??

14. On a careful reading of paragraph 123 of the judgment in Kedar Nath Yadav (supra), we find that the Apex Court had given directions for handing over possession to the land owners which should be interpreted to include all persons/units/industrial houses and not only to cultivators.

Paragraph 123 of the judgment is quoted below:-

â??123. The points formulated above have been answered by separate opinions. However we concur on the question of quashing the impugned acquisition proceedings and reliefs to be granted to the land owners/cultivators. The appeals are allowed, the common judgment and order dated 18.01.2008 passed in W.P.NO. 23836 (W) of 2006 and connected writ petitions by the High Court of Calcutta is set aside. The acquisition of land of the landowners/cultivators in the instant case is declared as illegal and void. Since the nature of the acquired lands has been changed in view of the acquisition, we direct the Survey and identify the mouzas of lands acquired with reference to lay out plans, other connected records, village maps and survey settlement records of the lands in question within 10 weeks from the date of receipt of the copy of this order, in order to indentify the respective portions of land which needs to be returned to the respective landowners/cultivators. Let possession of the lands be restored to the landowners/cultivators within 13 weeks from the date of receipt of the copy of this judgment and order. The compensation which has already been paid to the land owners/cultivators shall not be recovered by the state

Government as they have been deprived of the occupation and enjoyment of their lands for the last ten years. The landowners/cultivators who have not withdrawn the compensation are permitted to withdraw the same which is in deposit either with the Land Acquisition Collector or the Court.â??

15. The judgment of the Apex Court should not be read at a statute. We are not bound by the various reasons and observations made in the judgment

but, only the ratio of the judgment in Kedar Nath Yadav (supra) is a binding precedent. The judgment has to be analyzed on the facts of the case and

the principles which had been applied for the Apex Court to come to its decision. Reliance is placed on the relevant paragraphs in the decision of

Laxmi Devi (supra):-

â??22. A Constitution Bench has also reflected on the true nature of ration decidendi in Krishena Kumar vs. Union of India as is discernable from the

following passages:

â??19. The doctrine of precedent, that is being bound by a previous decision, is limited to the decision itself and as to what is necessarily involved in it.

It does not mean that this Court is bound by the various reasons given in support of it, especially when they contain â??propositions wider than the

case itself requiredâ??. This was what Lord Selborne said in Caledonian Railway Co. V. Walkerâ??s Trustees and Lord Halsbury in Quinn v.

Leatham. Sir Frederick Pollock has also said:

â??Judicial authority belongs not to the exact words used in this or that judgment, nor even to all the reasons given, but only to the principles accepted

and applied as necessary grounds of the decision.â??

20. In other words, the enunciation of the reason or principle upon which a question before a court has been decided is alone binding as a precedent.

The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or

abstract from the specific peculiarities of the particular case which gives rise to the decision. The ratio decidendi has to be ascertained by an analysis

of the facts of the case and the process of reasoning involving the major premise consisting of a pre-existing rule of law, either statutory or judge-

made, and a minor premise consisting of the material facts of the case under immediate consideration. If it is not clear, it is not the duty of the court to

spell it out with difficulty in order to be bound by it.Â?? Â

16. The argument advanced on behalf of the appellants that the land of the writ petitioner with the structures in respect of which TML had made

several changes and improvement could not be returned is not acceptable. We also do not agree with Mr. Majumdar that the judgment in Kedar Nath

Yadav (supra) was applicable to landowners and cultivators who lost lands and not to business houses. We disagree with the final contention of Mr.

Majumdar that as the existing structures had been changed and altered by TML and compensation in respect of the structures had already been paid,

the State of West Bengal had a right over the structures, and the land would be returned to the writ petitioners after the structures were demolished.

17. In view of the principle laid down in section 108 (h) of the Transfer of Property Act, 1882 we are of the view that once TML had abandoned the

project without removing the structures although, they could have done so and once the acquisition proceedings had been set aside, the writ petitioners

in terms of the decision of the Apex Court were entitled to get back the land along with structures. Reference is made to the provisions of Section 108

(h) of the Transfer of Property Act, 1882 which reads as follows:-

Â??108 (h) the lessee may 1[even after the determination of the lease] remove, at any time 2[whilst he is in possession of the property leased but not

afterwards] all things which he has attached to the earth; provided he leaves the property in the state in which he received it;Â??

18. We are in agreement with Mr. Mukherjee on the point that the acquisition proceeding having being set aside on the ground of violation of the

procedure laid down in the said Act, the writ petitioner was entitled to get back the land along with the structure as land included anything attached to

it. Reference is made to the definition of Â??landÂ?? in BlackÂ??s Law Dictionary-Ninth Edition:-

Â??Land, 1. An immovable and indestructible three-dimensional area consisting of a portion of the earthÂ??s surface, the space above and below the

surface, and everything growing on or permanently affixed to it.Â??

19. We also agree with Mr. Mukherjee on the point that the expression land owners/cultivators could not be restricted only to mean the agrarian

population of Singur but also included industrial units which were owners of the land and structures that had been acquired in the land acquisition

proceedings. Ultimately the said proceeding had been set aside with directions to restore back the possession to the owners irrespective of the fact

that compensations were paid and accepted by those affected persons. In our view the expression "landowner/cultivators" could not be given a

restricted meaning but should be interpreted in a wider sense to mean all persons whose lands whether vacant or having construction thereon which

were used either for industrial purpose or for cultivation were entitled to get back their lands in such condition as it was on the date of passing of the

judgment by the Apex Court in Kedar Nath Yadav (supra). In the opinion of the Apex Court the very purpose of the acquisition had failed and all

those persons affected were deprived from enjoying the usufructs of the lands for more than a decade and as such the Apex Court concluded that

complete justice would be done only if the land owners were returned the land irrespective of having been compensated by the state. The writ

petitioner, in our opinion is also one such land owner and were entitled to utilize their land in view of the fact the Apex Court did not direct fresh

proceedings as the purpose of the acquisition had failed. Â

20. We find from the relief finally granted in Kedar Nath Yadav (supra) that although, the non-compliance of section 5-A of the said Act was one of

the issues which fell for decision that may have had a bearing on the relief finally granted but, ultimately the Apex Court issued a concurring judgment

on the finding of illegality in the acquisition proceedings and consequent quashing of the same and finally in granting the reliefs to the affected land

owners. The land of the writ petitioner was included in the acquisition proceeding which was set aside and the same should be returned to the writ

petitioner with the structures. Any land owner, whether a cultivator or a business house is a beneficiary of the judgment. No separate class was

created by the Apex Court while granting restoration of land to the land owners/cultivators irrespective of payment of compensation. We agree with

the decision of the learned Single Judge and the reasons assigned by him. The land along with the structures should be returned to the writ petitioner

within 6 weeks from the date of communication of this order.

21. With the above observations the appeal is dismissed. There will be no order as to costs.

22. Urgent Photostat certified copy of this judgment, if applied for be given to

the parties on priority basis.