

HIGH COURT OF CALCUTTA**Bench : Partha Sarathi Chatterjee,****Date of Decision: 09 May 2024**

WPA 18 of 2012

JHANTU MANDAL**-VS.-****THE STATE OF WEST BENGAL & ORS.****Legislation:**

Section 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948

Section 9(3A) of the Land Acquisition Act, 1894

Sections 24(1) and 114 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

West Bengal Land Acquisition Laws (Amendment and Validation) Act, 2011

Subject: Writ petition seeking restoration of land and compensation under the expired requisition and acquisition acts, addressed through the lens of the 2013 Land Acquisition Act due to failure of respondents in completing the acquisition process.

Headnotes:

Land Acquisition – Failure of Procedure – Writ petition against State for restoration of land acquired in 1983 under West Bengal Land (Requisition and Acquisition) Act, 1948 and compensation – Petitioner challenged the non-completion of acquisition process and non-payment of compensation – Despite expiry of the 1948 Act and repeal of the 1894 Act by the 2013 Act, no acquisition award was made – Court directed re-notification of acquisition under the 2013 Act to resolve the issue of compensation – Held, possession

taken without compensation constitutes a continuing wrong allowing for judicial intervention irrespective of the delay – Court orders re-notification of acquisition and compensation determination under the 2013 Act [Paras 13-25].

Referred Cases:

- State of West Bengal & Ors. Vs. Aziman Bibi & Ors., (2016) 5 SCC 710
- State of West Bengal & Ors. Vs. Ganesh Samanta, (2014) 4 WBLR (Cal) 996
- Union of India vs. Tarsem Singh, (2008) 8 SCC 648
- Banda Development Authority, Banda vs. Moti Lal Agarwal & Ors., 2011(3) Supreme 473

Representing Advocates:

For the Petitioner: Mr. Amit Kumar Pan, Ms. Tanusri Santra

For the State: Mr. Lalit Mohan Mahata, Mr. Prasanta Behari Mahata

Partha Sarathi Chatterjee, J.:-

1. The present writ petition was instituted primarily praying for issue of a writ of *mandamus* commending the concerned respondents to restore the lands in question to the petitioner and pay all admissible dues towards the occupational charge and rental compensations.
2. Adverting to facts of the case, it would be noticed that two plots of land bearing nos. 204 and 205, comprising an area of 0.12 Acre and 0.18 Acre respectively appurtenant to Mouza- Dakshin Roypur, J.L. No.70, P.S. Budge Budge (Nodakhali), District- South 24 Parganas (hereinafter referred to as the lands) belonged to the petitioner's grand-mother, namely, Malabati Dasi, since deceased. Upon her demise, the petitioner as one of her legal heirs, inherited 1/3rd share of those two plots of land.
3. Sometimes in 1979, a land acquisition proceeding *vide*. Case no. LA-II/8 of 1979-80 came to be initiated by the Collector concerned in terms of the West

Bengal Land (Requisition and Acquisition) Act, 1948 (in short, the Act II of 1948) under Raypur Basin Drainage Scheme. An order under Section 3(1) of Act II of 1948 in connection with the proceeding was served upon the predecessor-in-interest of the petitioner. On 8th September, 1983, the possession of the lands were taken over.

4. The specific case, as sought to be made out in the writ petition is that in view of West Bengal Land (Requisition and Acquisition) Amendment Act, 1994, the power of the competent authority to make requisition under Section 3 of Act II of 1948 was taken away with effect from 1st April, 1994 and the life of the Act II of 1948 came to an end with effect from 31st March, 1997. It was averred therein that no notice under Section 4 (1A) of the Act II, 1948 was published in the official gazette during the period so long the Act-II was in operation.
5. On numerous occasions, the petitioner approached the competent authority soliciting its effective steps to resolve the issue but despite being so approached, the authority did not restore the lands to the persons interested nor did it pay any compensation for the lands though the respondents have been enjoying the lands since 1983.
6. No affidavit-in-opposition is found on record. Liberty was granted to respondents to submit re-affirmed copy of the affidavit-in-opposition but the same has not been submitted. A supplementary affidavit appending the copy of the affidavit-in-opposition used on behalf of the respondent nos. 2, 3 and 4 thereto has been pressed into service by the petitioner, which is taken on record. The petitioner has not filed his response to that affidavit-inopposition.
7. Mr. Pan, learned advocate representing the petitioner sought to urge that the Act II of 1948 has lost its life on 31st March, 1997. The respondents did not revive the proceedings by taking recourse to the provisions of the Section 9(3A) of the Land Acquisition Act-I of 1894 (in short of Act I of 1894).
8. It was further contended by him that since 1st January, 2014 the Act I of 1894 has been repealed. As such, the respondents have got no other alternative but to pay compensation in terms of the relevant provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act of 2013(in short, the Act of 2013). In aid of his such contention, he cited two decisions, reported at (2016) 5 SCC 710 (State of West Bengal & Ors. vs. Aziman Bibi & Ors.) and (2014) 4 WBLR (Cal) 996 (State of West Bengal & Ors. vs. Ganesh Samanta).
9. Mr. Mahata, learned advocate appearing for the State contended that the petitioner claimed the possession of those two plots of land which was taken

over in 1983 but the petitioner instituted the present writ petition in 2012. He strenuously argued that the petitioner caused inordinate delay in preferring this writ petition and as such, the petitioner is not entitled to get any equitable relief in this writ petition. In aid of his contention, he relied on a judgment, reported at 2011(3) Supreme 473 (Banda Development Authority, Banda –vs- Moti Lal Agarwal & Ors.).

10. Quite apart from that, he argued that the petitioner himself admitted that the lands belonged to one Smt. Malabati Dasi but the petitioner did not produce any documents to show how he is related to those two plots of land. He next argued that though the petitioner claimed himself to be one of the legal heirs but no reason has been assigned why the other legal heirs have not been brought in the array of the parties.
11. Mr. Pan was quick to respond the argument advanced by Mr. Mahata contending that the respondents should not be allowed to use such sort of technical issue of delayed institution of the writ petition as a protective shield against their misdeeds. He further contended that in the writ petition, it was specifically averred that the petitioner inherited 1/3rd shares of those two plots of land. He contended that the petitioner brought the action as one of the joint owners of those two plots of land. He submitted that every decision in respect of those two plots of land will be taken upon giving notice to all the persons interested.
12. Heard learned advocates appearing for the respective parties. Perused the materials on record.
13. Record reveals that by passing an order under Section 3(1) of the Act-II of 1948, the Collector concerned requisitioned a chunk of land including those two plots of land. On 08.09.1983, the possession of those two plots of land was taken over. Admittedly, the petitioner has instituted the writ petition in 2012. Therefore, the petitioner caused delay in knocking on the door of this Court. As such, a question which must come is whether or not it would be apt to entertain the writ petition after such length of time.
14. Needless to state, no period of limitation has been specified within which a writ petition under Article 226 of the Constitution of India is to be instituted but it is expected that a writ petition should be filed within a reasonable time. It is well-settled principle that none is entitled to seek equitable relief if his own conduct is blameworthy because of undue delay, laches, acquiescence, waiver or the like. General principle is that if it is found that belated resort to extra-ordinary remedy would lead to public inconvenience or interference with

the rights of others, the writ court may decline to invoke its extraordinary jurisdiction.

15. However, in a case if it is found that there is a continuous wrong, then denial to exercise the jurisdiction on the basis of such self-imposed restriction would not be justified. If any claim is based on such continuing wrong, relief can be granted even if there is a long delay in seeking the remedy. To lend support to this view, I may usefully refer the decision, reported at (2008) 8 SCC 648 (Union of India vs. Tarsem Singh).
16. Holding possession of any land of the citizen without making payment of compensation is a continuing wrong and such continuing wrong creates a continuing source of injury. Therefore, in this case, this Court can exercise its jurisdiction without reference to the date when such continuing wrong commenced.
17. As noticed earlier, the Collector in exercise of his power enjoined upon him under Section 3 of the Act-II requisitioned the lands and took possession of the lands in connection with an acquisition proceeding *vide* case no. L.A.-II/8 of 1979/80. In the order passed in Section 3(1) of Act-II, name of Malabati Dasi was mentioned as owner.
 18. From the affidavit-in-opposition, as annexed with the supplementary affidavit, it would be explicit that the possession of lands with standing crops had already been handed over to the requiring body on 12th January, 1984 and those lands have been utilized. In the affidavit, the answering respondents specifically admitted that the land acquisition could not be concluded within the life time of Act-II of 1948 and even the proceeding had not been revived in invocation of the provisions of the Land Acquisition Amendment Act, 1977 and the Land Acquisition Amendment Act, 1999 read with the West Bengal Land Acquisition Laws (Amendment and Validation) Act, 2011.
19. Suffice to observe that the Act- II of 1948 was a temporary statute and the same ceased to operate with effect from 31st March, 1997. There was an opportunity to revive the proceeding taking recourse to the provisions of Section 9(3A) of Land Acquisition (West Bengal Amendment), 1997 but that opportunity has not been availed of.
 20. Needless to mention that in view of S.114 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the Land Acquisition Act-I of 1894 stood repealed w.e.f. 1st January, 2014. Therefore, as of date, there is no scope to invoke the provisions of Act-I of 1894.

21. As per the legislative fiat, as incorporated in provisions of Section 24(1) of the Act of 2013, if no award is declared in terms of the Land Acquisition Act, 1894, the proceeding shall be deemed to have been lapsed and the authority was granted liberty to initiate the acquisition proceeding afresh in accordance with the provisions of Act of 2013.
22. In the case of Aziman Bibi & Ors.(*supra*), the land was acquired invoking the Act-II of 1948 but no award was declared in terms of the provisions of Act-I of 1894, the Hon'ble Apex Court held that the authority concerned has to notify the acquisition afresh in terms of the provisions of the Act of 2013. Needless to mention that Act-II mandated to award compensation in terms of Section 23 of Act-I and in case of Azimon Bibi (*supra*), it was further observed that the provisions of Section 11A of the Act-I stood included in the Act-II of 1948.
23. As such, in view of foregoing analysis, the only analogy which can be drawn is that either the Collector has to notify the acquisition again in accordance with the provision of Act of 2013.
24. There is no scintilla of doubt regarding binding effect of decision cited by Mr. Mahata but the same is distinguishable on facts.
25. As a result, the writ petition is disposed of directing the Collector to notify the acquisition once again in accordance with the relevant provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act of 2013, determine the compensation in terms of that Act of 2013 and pay compensation to the persons interested expeditiously but not later than six months from the date of receipt of a copy of this order.
26. With this observation, the writ petition is disposed of, however, without any order as to the costs.
27. Parties shall be entitled to act on the basis of a server copy of this Judgement and Order placed on the official website of the Court.
28. Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

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