
(2022) 12 CAL CK 0010

Calcutta High Court (Appellate Side)

Case No: W.P.A No.10205 Of 2001, CAN 1 Of 2004, CAN 3 Of 2018 & CAN 4 Of 2018

Motilal Mondal & Ors.

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision: Dec. 6, 2022

Acts Referred:

- Constitution Of India, 1950 - Article 226
- Land Acquisition Act, 1894 - Section 4(1), 6, 9, 11, 11A
- Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 - Section 24

Hon'ble Judges: Hiranmay Bhattacharyya, j

Bench: Single Bench

Advocate: Usha Maiti, Anita Khatri, Sakya Maity, Sankar Lal Khanra, Lalit Mohan Mahata, P Mahata, S.M Hassan, Anupama Yasmin, Sk. Rejaul Alam, S.M Hassan

Final Decision: Dismissed

Judgement

Hiranmay Bhattacharyya, J

1. The petitioners have prayed for issuance of a writ in the nature of mandamus to command the respondent authorities to compute the compensation

amount of the petitioners's land on the basis of the market value fixed by the Jurisdictional Sub-Registrar and as well as the West Bengal Central

Valuation Board. The vires of several provisions of the Land Acquisition Act, 1894 (for short the "1894 Act") was also challenged and a

declaration that such provisions are ultra vires, unconstitutional and void was also made.

2. However, in course of hearing of the writ petition, Mrs. Maity did not press the issue insofar as the challenge to the provisions of the 1894 Act is

concerned but restricted her submission only to the extent that the acquisition proceeding stood vitiated for not passing the award within the statutory period of two years and also that the acquisition proceeding was not concluded due to not taking over physical possession of the property in question.

Though the writ petition was originally filed by 77 writ petitioners and upon the death of some of the writ petitioners their heirs were substituted but

Mrs. Maity in course of hearing only canvassed the case of the petitioner no. 1 and 2.

3. Since the issue relating to vires of certain provisions of the 1894 Act was not pressed at the time of hearing, the prayer for declaration that such provisions are ultra vires is, therefore, dismissed as not pressed. Thus, the only issue that remains to be considered is whether the petitioners are entitled to other reliefs claimed in the writ petition.

4. Several plots of land within Mouja Bhabanipur, JL No. 150 under Police Station Sutahata in the District of Midnapur were the subject matter of acquisition of land for establishment of urban complex at Haldia inter alia giving rise to land acquisition case nos. 77 and 78 of 1997-1998.

5. The following facts are not in dispute-

(i) Notification under Section 4(1) of the Land Acquisition Act, 1894 was published on 25.04.1997.

(ii) Declaration under Section 6 of the said Act was published on 11.08.1997.

(iii) Award under Section 11 of the said Act was declared on 16.04.2001 in LA Case no. 78 of 1997-98.

(iv) Award was declared under Section 11 of the said act on 17.04.2001 in LA Case no. 77 of 1997-1998.

6. The main thrust of the argument of Mrs. Maity, learned advocate for the petitioner is that the award was declared beyond the time limit specified under Section 11A of the 1894 Act and, therefore, the entire proceedings for acquisition of the land stood lapsed. Mrs. Maity further submitted that the possession of the disputed lands was not taken over and therefore the lands in question did not vest to the State.

7. Mr. Mahata learned advocate for the State submitted that several writ petitions were filed before this Honâ€™ble Court challenging the said land

acquisition proceedings. He further submitted that interim orders were passed by this Court in one of such writ petitions on 12.05.1998 restraining the state respondents from proceeding any further with the acquisition proceedings and the state respondents were also restrained from interfering with the right, title and possession in respect of property in question. He further submitted that the notification under Section 4 of the 1894 Act in case of the said acquisition proceeding was also quashed by this Court in WP No. 3078 of 1998. On a review being filed from an order passed in WP 3078 of 1998, the order quashing the said notification was recalled and the respondent authority was allowed to proceed in terms of Section 9 of 1894 Act and pass the award with regard to the properties in question. He, thus, submitted that if the period during which the state respondents were restrained from proceeding with the acquisition proceedings is excluded, the award cannot be said to have been passed beyond the time limit specified in the said statute.

8. The learned advocates for the Municipality and the Haldia Development authority adopted the argument of Mr. Mahata.

9. Heard the learned advocates for the parties and perused the materials placed.

10. From the documents filed along with the writ petition and the report filed by the Land Acquisition Collector, Haldia and Special Land Acquisition

Officer, Purba Medinipur it is evident that the Honâ€™ble Single Judge in WP 9114(W) of 1998 passed an interim order of injunction on 12.05.1998.

It is further evident from records that on an application for extension of the said interim order, an order was passed on 17.03.1999 thereby restraining

the respondents from proceeding on the basis of the acquisition notification and the state respondents were restrained from interfering with the right,

title, possession in respect of the property in question.

11. Record further reveals that in another writ petition involving the acquisition of the land in question being WP 3078 of 1998 an order was passed on

November 19, 1998 thereby quashing the notification under Section 4 of the said Act. However, on an application for review the said order dated

November 19, 1998 was recalled and the concerned respondent was directed to pass the award with regard to the properties in question upon giving

hearing to the writ petitioners therein in terms of Section 9 of the said Act. The said order was passed on May 17, 2000.

12. In view of such facts this Court is of the considered view that during the period from 12.05.1998 till 17.05.2000 the State respondents were restrained from taking any action or proceeding any further with the acquisition proceedings in view of the aforesaid orders passed by this Honâ€™ble Court in several writ petitions. It is only upon passing of the order dated 17.05.2000 that the respondent authorities were allowed to proceed with the acquisition proceedings and pass an award. The embargo to proceed with the acquisition proceedings was lifted with the passing of the order dated 17.05.2000.

13. Section 11 A casts an obligation upon the Collector to make an award under Section 11 of the 1894 Act within a period of two years from the date of publication of the declaration. However, if no award is made within such period the entire proceedings for the acquisition of the land shall lapse.

14. Section 11A reads as follows-

â€œ11A. Period within which an award shall be made.- The Collector shall make an award under Section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation- In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.â€

15. The Honâ€™ble Supreme Court in the case of The State of Maharashtra and ors. vs. M/s. Moti Ratan Estate and another reported at (2019) 8

SCC 552 after considering the catena of decisions held that if there is any stay over the action or proceeding by a court of law in connection with acquisition proceedings, the authorities are justified to stay their hands and await the decision of the court and the period during which there is a stay

over the action or proceeding by a court of law in a matter , that has to be excluded for all practical purposes in computing the statutory period of two years for passing an award under Section 11 of the said Act. Therefore, by applying the decision of the Honâ€™ble Supreme Court in the case of Moti Ratan Estate (supra), this Court is of the considered view that the aforesaid period from 12.05.1998 to 17.05.2000 is to be excluded from the period starting from the date of publication of the declaration till making of the award. If such period is excluded, the award was passed within the time limit stipulated under Section 11A of the said Act. For the reasons as aforesaid, this Court is unable to accept the contention of Mrs. Maity that entire proceedings for acquisition had lapsed.

16. The petitioners claim to be in possession of the land. The petitioner no. 2 further claims to have transferred his property to his minor son.

17. It has been specifically stated in the Supplementary Affidavit-in-Opposition filed by the respondent nos. 9 and 10 more specifically in paragraph 4(d), 11 and 12 therein that after taking possession, the same has been delivered to the requiring body. Such statements, however, remains uncontroverted.

18. The thrust of the argument of Mrs. Maity with regard to possession is that the petitioners are still the recorded owners of the property in question.

19. It is well settled that entries in the record of rights neither creates any title nor does it extinguish the same. It only enables the person in whose favour the recording is made in the record of rights to pay the land revenue. Title of the property in question stood vested to the State upon passing of the award and taking over possession of the land in question and therefore, such property cannot be said to have been divested only on the basis of entries in the revenue records.

20. The Honâ€™ble Supreme Court in the case of Meera Sahni vs. Lt. Governor of Delhi & Ors. reported at (2008) 9 SCC 177 held that the subsequent purchaser cannot challenge the acquisition proceedings under the Land Acquisition Act but will only be entitled to get the compensation.

Therefore, this Court holds that merely because of the fact that the petitioners no. 2 claims to have transferred the property in question, such transfer cannot and did not vitiate the acquisition proceedings.

21. It is also well settled that this Court under Article 226 of the Constitution of India cannot travel beyond the scope of the writ petition. The writ petitioner has challenged the mode of computation of compensation on which no submission has been advanced by the learned advocate for the petitioner.

22. In *Singareni Collieries Co. Ltd. vs. Vemuganti Ramakrishnan Rao & Ors.* reported at (2014) 2 WBLR (SC) 491 the question that fell for consideration before the Honâ€™ble Supreme Court was whether time taken for obtaining copy of the judgment/ order by which stay order was passed is to be excluded in computing the time prescribed under Section 11A of the said Act. Such issue is not germane for consideration in this writ petition and therefore, the same is of no assistance to the petitioner in the instant case.

23. In *Sheela Jawarlal Nagori and another vs. Kantilal Nathmal Baldota an ors.* reported at (2014) 11 SCC 376 the tenant raised an objection as to the maintainability of an eviction suit on the ground that the suit property was acquired by the municipal corporation and consequently the land lord was divested of his right, title and interest in the suit property. On facts, the High Court found that the Corporation had not taken possession of the suit property and accordingly, the Honâ€™ble Supreme Court held that in the absence of possession of the suit property being taken by the corporation, the contention of the tenant that the land lord was divested of his right, title or interest in the suit property cannot be accepted. The said decision is distinguishable on facts and, therefore, has no manner of application to the facts of this case.

24. In *ABCI Infrastructure Pvt. Ltd. vs. State of West Bengal & ors.* reported at (2017) 1 WBLR (Cal) 90, the co-ordinate Bench, on the basis of the admission of the respondents that possession of the land in question has not been taken, held that the transfer made by the vendors in favour of the writ petitioners therein is valid as on the date of transfer the vendors were the owners of the land and were also in possession of the same. The said decision being distinguishable on facts has no manner of application to the facts of this case.

25. The right of a transferee to be impleaded in a suit when such transfer was made in defiance of the restraint order was in issue before the

Honâ€™ble Supreme Court in Surjit Singh and ors. vs. Harbans Singh and ors. reported at (1995) 6 SCC 50 cited by Mrs. Maity. The decision in the

case of Surjit Singh (supra) was distinguished by three Honâ€™ble Judges of the Supreme Court of India in the case of Savitri Devi vs. District

Judge, Gorakhpur and others reported at (1999) 2 SCC 577. In Savitri Devi, the issue was when the transfer was in breach of an order of injunction,

whether the transferees under such sales acquired title to the property in order to get impleaded as parties to the suit. The Honâ€™ble Supreme Court

held that impleadment of such transferees was proper. In view thereof, the decision of Surjit Singh (supra) is of no assistance to the petitioner.

26. The co-ordinate bench in the case of Bijoli Naskar (supra) placed reliance on the decision in the case of Surjit Singh (supra) without noticing the

subsequent decision of the larger bench in the case of Savitri Devi (supra) though the decision of Savitri Devi was earlier in point of time than the

decision of the co-ordinate bench.

27. The decision of the co-ordinate bench in the case of Smriti Kana Mallick vs. The State of West Bengal & ors. in WP 9114(W) of 1998 is of no

assistance to the petitioner as the writ petition challenging the acquisition notification was dismissed upon holding that the validity of the acquisition was not affected.

28. In the case on hand, the respondent authorities were allowed to proceed with the acquisition proceedings and to pass an award vide order dated

17.05.2000 passed in WP 3078 of 1998. It is not the case of the petitioners that they were enjoying an order of injunction. Explanation appended to

Section 11A only enables the acquiring body to exclude the period during which they were restrained from proceeding with the acquisition proceeding

while computing the statutory time limit for passing an award. The writ petitioners cannot be allowed to take advantage of the date of passing of the

order in WP No. 9114 to contend that the acquisition proceeding was in the teeth of an order of injunction as the acquisition proceedings, was started

pursuant to the order passed by this Honâ€™ble Court.

29. In the decision of the Hon^{ble} Supreme Court in the case of Indore Development Authority vs. Manoharlal and ors. reported at (2020) 8 SCC

129 the issues that fell for determination upon reference was with regard to the interpretation of Section 24 of the Right to Fair Compensation and

Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "the 2013 Act") Since the issues that were decided in the

said reported decision is not germane in this writ petition, the same has no manner of application to the case on hand.

30. For all the reasons as aforesaid, this Court holds that the writ petition is devoid of any merit and the same accordingly stands dismissed without,

however, any order as to costs. Consequently, the applications stand disposed of.

31. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.