

(2025) 01 CAL CK 0062

Calcutta High Court (Appellate Side)

Case No: WPA 16098 Of 2014 With CAN 4 Of 2024

Kalam Kumar Sharma and Anr

APPELLANT

Vs

Union Of India and Ors

RESPONDENT

Date of Decision: Jan. 21, 2025

Hon'ble Judges: Partha Sarathi Sen, J

Bench: Single Bench

Advocate: Goutam Kumar Das, Indranuj Dutta, Benazir Sk., Lalit Mohan Mahata, Prasanta Behari Mahata, Arijit Majumdar

Final Decision: Disposed Of

Judgement

Partha Sarathi Sen, J

1. In this writ petition the writ petitioners have prayed for issuance of a writ of mandamus against the respondent/authorities for commanding them to act in accordance with the Land Acquisition Act, 1894 (hereinafter referred to as the said 'Act of 1894' in short) and also to act in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013(hereinafter referred to as the said 'Act of 2013' in short) with a further prayer to award compensation in favour of the writ petitioner in respect of the plots of land which are subject matter of the instant writ petition with an alternative prayer for reverting back the possession of the said plots of land to the writ petitioner.

2. It is pertinent to mention herein that in the instant writ petition the respondent no.1 is the Union of India and the respondent nos. 2 to 5 are the different functionaries of the South Eastern Railway Authority. The respondent nos. 6 to 11 are however the functionaries of the State of West Bengal.

3. It is the case of the writ petitioners that one Mithulal Sharma @ Mithu Mistry who was the grandfather of the writ petitioners was the owner of the plots of land bearing plot nos.22, 13, 82, 225/355 in Mauja Mathurakati Khas Jungle, J.L No.143, Touzi No. 2723, Mathurakati Khasjungal

(Nimpura), Khaitan No.2 (Old), 18, 374 (New) and 337 (New) measuring about 7.48 acres. It is the further case of the writ petitioners that by virtue of a probated will left behind by the said Mithu Mistry, since deceased, the writ petitioners became owner of the said plots of land and came into possession of the same. It is the grievance of the writ petitioners that in respect of the said plots of land a land acquisition (LA case no. 9 of 1964-65) was started wherein 37 decimals of land was acquired in plot no.82 out of 56 decimals by the Land Acquisition Collector of District Mednipur for the requiring body i.e. South Eastern Railway and in such acquisition proceeding compensation has been awarded.

4. It is the further case of the writ petitioner that on August, 2004 the writ petitioner came to learn that the Railway Authority removed the fencing of the writ petitioners' land, destroyed valuable trees as standing thereon including a farm house and a big wall and subsequently constructed railway track over the said plot of land without any land acquisition process. It is the further case of the writ petitioner that except the aforementioned land acquisition proceeding no further acquisition proceeding was started by the Land Acquisition Collector of the District of Mednipur and thus the writ petitioners' constitutional right as enshrined in Article 300 A of the Constitution of India has been violated at the instance of the respondent nos. 1 to 5.

5. In the instant case the respondent nos. 1 to 5 being the Union of India and the different functionaries of the South Eastern Railway and the respondent nos. 6 to 11 being the different functionaries of the Government of West Bengal filed their separate affidavits-in-opposition wherein the contention of the writ petitioners as made in the writ petition has been denied specifically. It has been claimed by the respondent nos. 1 to 5 i.e. the functionaries of the South Eastern Railway that they are in lawful possession over the subject property and the subject property was acquired on behalf of the railway authority by the Land Acquisition Collector of the concerned district by initiating land acquisition proceeding and some of such proceedings have been initiated and completed even before independence.

6. Considering the rival submissions of the parties to the writ petition a Co-ordinate Bench of this Court by its order dated 20.07.2023 passed the following order:

"In view of such circumstances, though the respondent No.10 is directed to conduct survey of the entire land of the petitioners measuring about 7.45 acre and also to demarcate 37.03 decimal of land which was acquired by the State Government and the compensation was paid to the 2 petitioners as well as the possession of the remaining land on field inspection within 30 days from the date of this order.

All parties are directed to co-operate the respondent No.10 in the matter of survey. The petitioners are directed to file the record of rights in respects of the land in question to the BL & LRO. The South East Railway Authorities is also directed to produce necessary documents relating to acquisition of the land and also the documents on the basis of which they claim possession in respect of the land situated outside the acquired area."

7. Pursuant to such order a report is submitted by the Assistant Director and BL& LRO, Kharagpur I-Paschim Mednipur under cover of his memo no.332/KGP-1/24 dated 07.02.2024. For effective adjudication of the instant writ petition this Court considers that the relevant portion of the report dated 07.02.2024 as mentioned supra is required to be looked into and the same is reproduced herein in verbatim:-

"Accordingly, on joint survey report (Annexure-E) upon the lands in question it transpires, -

** There is no permanent structure observed upon the suit land.*

**As per RS RoR, the RS plot no. 13 amounting 1.47 ac is recorded in the name of one Mithu Mistry, son of Nanda Kishore at RS khatians no. 337 which is presently possessed by the South East Railway Authority by way of plantation.*

** As per RS RoR, the RS plot no. 82 amounting 0.56 ac is recorded in the name of one Mithu Mistry, son of Nanda Kishore at RS khatians no. 337 which is presently possessed by the South East Railway Authority in terms of railway track.*

**There is no existence of suit RS plot no. 22 and plot no. 225/355 in any of the claimed RS khatians. That RS plot no. 22 corresponds to LR plot no. 60 which is recorded in computerized land records in the name of one Narsingha Bechar which is also possessed by that railway authority by way of plantation.*

**In addition to, the RS khatian 18 and 374 belong to that Mithu Mistry, son of Nanda Kishore which do not contain any of the claimed RS plots. It is important to note that the RS khatian no. 2 is recorded as vested to the state in the name of collector.*

**That 37.03 dl in question is coloured and sketched and demarcated which is located under RS plot no. 82 corresponding LR plot no. 48(P), 116(P) and 121. (Annexure-F)"*

8. In course of his submission Mr. Das, learned advocate appearing on behalf of the writ petitioner submits before this Court that from the said report it would reveal that RS Plot no. 13 measuring about 1.47 acres though is recorded in the name of the predecessor-in-interest of the writ petitioners but the same is in occupation of the South Eastern Railway Authority. It is contended by him that the said report does not say anything about any acquisition proceeding by the Land Acquisition Collector of District Paschim Medinipur. It is thus submitted by Mr. Das that the said report dated 07.02.2024 further reflects that in respect of RS Plot no.82 the entire 0.56 acre of land is in possession of the South Eastern Railway Authority in terms of railway track though acquisition process in respect of the said plot of land was completed in respect of 0.37 acre of land and thus in respect of 0.19 acre of land the railway authority could not justify as to how they came into possession of the remaining 0.19 acre of land in RS plot no.82 which still stands in the name of the predecessor-in-interest of the writ petitioners. Drawing further attention of the court to the report Mr. Das further submits that RS plot no.22 which is corresponding to LR plot no.60 though stands in the name of one Narsingha Bechar which is in possession of the South Eastern Railway Authority but the writ petitioners' predecessor-in-interest was actual owner of the same and thus the recording in the record of right in respect of LR Plot No.60 is wrong wherein the South Eastern Railway Authority is found to be in possession without any acquisition proceeding and thus depriving the writ petitioner to obtain compensation for losing the said portion of the said plot of land.

9. It is thus submitted by Mr. Das that neither the respondent nos. 1 to 5 being the Union of India and the functionaries of Railway Authority nor the respondent nos. 6 to 11 being the functionaries of the State of West Bengal be permitted to grab the land of the writ petitioners depriving them from

adequate compensation as per the said Act of 2013.

10. Mr. Das in course of his argument places reliance upon the reported decision of *Vidya Devi Vs. State of Himachal Pradesh* reported in 2020 (2) SCC 569.

11. Mr. Mahata, learned advocate for the respondent/State in course of his submission though disputed the contention of the learned advocate for the writ petitioners, he however submits that the report dated 07.02.2024 is correct. Mr. Mahata submits before this Court that though the writ petitioners' predecessor-in-interest's name was found in the record of right in respect of RS Plot nos.13 and 82 but because of long lapses and delay on the part of the writ petitioners, the writ petitioners are not entitled to any relief as prayed for in the instant writ petition. It is further argued that plot no.14 in the said mauja is not the subject matter of the instant writ petition though in their affidavit-in-reply the writ petitioners made an endeavour to include the said plot with the subject matter of the writ petition which is not permissible. Mr. Mahata places his reliance upon the following three reported decisions namely:-

i. Banda Development Authority, Banda vs. Moti Lal Agarwal and Ors. reported in 2011 (5) SCC 394;

ii. Indore Development Authority vs. Manoharlal And Ors. reported in 2020 (8) SCC 129; and

iii. Simraut Kaur and Ors vs. State of Haryana and Ors. reported in 2015 (13) SCC 563.

12. Mr. Majumdar, learned advocate for the respondent nos. 1 to 5 while adopting the argument of Mr. Mahata at the very outset draws attention of this Court to page nos. 18 to 28 of the said report being the copies of publication of declarations of the year 1911 and 1923 as has been published under Section 6 of the said Act of 1894. It is argued by Mr. Majumdar that the acquisition proceeding as started in the year 1911 and 1923 covers the land of the writ petitioners and therefore the writ petitioners cannot be permitted to agitate that the plots of land as involved in the instant writ petition were never acquired. Placing reliance upon the reported decision of *Chennai Metropolitan Water Supply and Sewerage Board and Ors. vs. T.T Murali Babh reported in (2014) 4 SCC 108* it is contended that on account of delay and laches on the part of the writ petitioners this Court may be very slow in granting relief to the writ petitioners in absence of any explanations on the part of the writ petitioners to substantiate as to what prevented them to file the instant writ petition at the earliest opportunity since the instant writ petition was filed more than after 100 years of acquisition for laying down the railway track.

13. After careful consideration of the entire materials as placed before this Court and after giving due consideration over the submissions of the learned advocates of the contending parties it appears to this Court that so far as plot no.14 is concerned there is no averment in the instant writ petition though in their affidavit-in-reply it has been stated by the writ petitioners that 0.18 decimal of land in plot no.14 out of 4.1 acres of land was/were acquired but no compensation was paid to them.

14. In considered view of this Court since the allegation of writ petitioners in respect of plot no.14 was not there in the writ petition the respondent/authorities did not get any opportunity to controvert the same and thus it would be unjust if the writ petitioners are permitted to agitate their claim in respect of the said plot no.14 at a belated stage. In view of such, the writ petitioners are not entitled to any relief in respect of plot no.14 since the same does not form the subject matter of the instant writ petition.

15. It is pertinent to mention herein that as directed by a Co-ordinate Bench of this Court on 20.07.2023 the BL& LRO Kharagpur I, District Paschim Mednipur submitted its report on 07.02.2024 and the respondent nos. 1 to 5 had not filed any exception to the said report and therefore the said report goes uncontroverted as against the respondent nos. 1 to 5.

16. As discussed supra it has been admitted by the writ petitioners that in respect of plot no.82 they have been paid compensation in respect of 0.37 acre and the said report reveals that South Eastern Railway Authority however possesses the entire 56 acres. No material is forthcoming either from the respondent nos. 1 to 5 or from respondent nos.6 to 11 as to how South Eastern Railway Authority came into possession of balance 19 acres of land wherein railway track has been laid. The said report reveals further that in respect of RS plot no.13 amounting to 1.47 acres of land the same is recorded in the name of Mithu Mistry, since deceased, the predecessor-in-interest of the writ petitioners but the entire land is presently possessed by the South Eastern Railway Authority by way of plantation.

17. As discussed earlier in respect of plot no.13 no document is forthcoming either from the side of the respondent nos. 1 to 5 or from respondent nos. 6 to 11 as to how the South Eastern Railway Authority came into possession of the said land.

18. For the sake of argument even if it is accepted that plot nos. 82 and 13 were the subject matter of the acquisition proceeding of 1911 and/or 1923 and/or of the subsequent years the record of rights (either CS or RS or LR) in respect of said plot of lands as has been maintained in the office of BL&LRO must reflect the factum of such acquisition. No document(s) with regard to the acquisition of the land in respect of 0.37 acre of land in plot no.82 and 1.47 acres of land in RS plot no.13 is /are forthcoming either from the Additional District Magistrate (LR) District Paschim Mednipur or Land Acquisition Collector, District Paschim Mednipur though the said two authorities of the Government of West Bengal are the appropriate authorities who keep all documents of acquisition in the said district.

19. In view of such this Court has no hesitation to hold that the writ petitioners' grievance in respect of plot no.82 and RS plot no.13 in the aforementioned mauja has some basis.

20. The next question which comes for consideration before this Court is as to whether on account of the long delay or laches, if there be any, on the part of the writ petitioners in approaching this Writ Court the claim of the writ petitioners can be held to be stale or not. As discussed supra both the learned advocates of the respondent nos. 1 to 5 as well as learned advocates for the respondent nos. 6 and 11 places their reliance upon the reported decisions of the Hon'ble Supreme Court which has been mentioned in the foregoing paragraphs.

21. In considered view of this Court in the reported decision of *Chennai Metropolitan Water Supply and Sewerage Board and Ors.* (supra) though the Hon'ble Apex Court held that the doctrine of delay

and laches should not be lightly braced aside and a writ court is required to weigh the explanation offered and the acceptability of the same but in considered view of this Court the said judgement has been delivered by the Hon'ble Supreme Court in a service related matter which is distinguishable from the facts and circumstances of the instant case.

22. The reported decision of *Banda Development Authority* (supra) though deals with the subject of delay/laches in preferring a writ petition but it appears to this Court that the said finding was given by the Hon'ble Supreme Court wherein the writ petitioner at a very belated stage challenged the notification for acquisition. This Court thus considers that the reported decision of Banda Development Authority is also distinguishable from the facts and circumstances of the present case.

23. In considered view of this Court the reported decision of *Simrat Kaur* (supra) is also distinguishable from the facts and circumstances of the instant case since the Hon'ble Supreme Court considered it fit not to condone the delay of 73 years 15 days of the appellant for revisiting the quantum of award especially when the self same award was subject matter of litigation before the Hon'ble Supreme Court at the instance of a number of land owners who were aggrieved with the quantum of compensation which has been finally disposed of by the Hon'ble Supreme Court.

24. The reported decision of *Indore Development Authority* (supra) has got no application in the facts and circumstances of the instant case since the legality of a concluding proceeding of land acquisition is not questioned before this Court by filing the instant writ petition.

25. On careful consideration of the entire facts as placed before this Court, this Court thus finds that the respondent nos. 1 to 5 could not justify their possession in respect of excess 19 acres of land in plot no. 82 and 1.47 acres in RS plot no.13 which stands recorded in the name of Mithu Mistry, the predecessor-in-interest of the writ petitioners. From the report dated 07.02.2024 nothing is forthcoming that in respect of the aforementioned quantum of land any acquisition took place.

26. At this stage this Court proposes to look to the reported decision of *Vidya Devi*(supra) and the relevant portion of the said reported decision is reproduced hereunder in verbatim:-

"12.11. We are surprised by the plea taken by the State before the High Court, that since it has been in continuous possession of the land for over 42 years, it would tantamount to "adverse" possession. The State being a welfare State, cannot be permitted to take the plea of adverse possession, which allows a trespasser i.e. a person guilty of a tort, or even a crime, to gain legal title over such property for over 12 years. The State cannot be permitted to perfect its title over the land by invoking the doctrine of adverse possession to grab the property of its own citizens, as has been done in the present case."

27. As rightly held by the Hon'ble Apex Court that the respondent nos. 1 to 5 as well as respondent nos. 6 to 11 being the State and its functionaries within the meaning of Article 12 of the Constitution cannot deprive its citizens from their right to property as enshrined in Article 300 A of the Constitution of India. This Court has every reason to believe that in plot no.82 the South Eastern Railway Authority is in possession of 0.19 acre of land for which neither any acquisition proceeding was initiated nor any compensation has been disbursed. Similarly in respect of RS plot no.13 the writ petitioners are deprived from their lawful possession of the said authorities without initiating any land acquisition proceeding.

28. This Court thus finds sufficient merit in the instant writ petition.

29. The writ petition is thus allowed in part.

30. Accordingly the Land Acquisition Collector, District Paschim Medinipur is hereby directed to initiate acquisition proceeding under chapter IV of the said Act of 2013 to assess the amount of compensation including the solatium and interest accrued thereon payable to the writ petitioners and/or any other interested persons in the light of the observation made hereinabove.

31. On such assessment the respondent nos. 2 to 5 being the functionaries of the South Eastern Railway Authority and being the requiring body are directed to disburse the compensation, solatium and interest accrued thereon to the writ petitioners and/or any other interested persons entitled to the same.

32. The Land Acquisition Collector, District Paschim Medinipur is hereby directed to complete the entire process as indicated in paragraph no. 30 within a period of 4 months from the date of communication of this order.

33. South Eastern Railway Authority and its functionaries being respondent nos. 2 to 5 are directed to disburse the compensation, solatium and the accrued interest thereon within 2 months thereafter.

34. Learned advocate for the respondent nos. 1 to 5 is hereby requested to communicate the server copy of this order to the South Eastern Railway Authority forthwith. Learned advocate for the respondent nos. 6 to 11 is also requested to communicate the server copy of this order to the Land Acquisition Collector, Paschim Medinipur.

35. South Eastern Railway Authority and its functionaries and the Land Acquisition Collector, District Paschim Medinipur are directed to act on the server copy of this order.

36. Department is also directed to forward the copies of this judgment to the respondent no.2 and the Land Acquisition Collector, District Paschim Medinipur forthwith.

37. With the aforesaid observation the instant writ petition is disposed of. CAN 4 of 2024 is also disposed of.

38. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.