

(1974) 05 CAL CK 0020

Calcutta High Court

Case No: None

Radhabai Purshottam Alias
Radhabai Damodar

APPELLANT

Vs

Secretary, Ministry of Land and
Land Revenue, Department and
Others

RESPONDENT

Date of Decision: May 27, 1974

Acts Referred:

- Constitution of India, 1950 - Article 227
- West Bengal Estates Acquisition Act, 1953 - Section 10(2), 14, 15, 15(1)(a), 15(a)

Citation: 79 CWN 213

Hon'ble Judges: P.K. Banerjee, J

Bench: Single Bench

Advocate: S.C. Sen and P.N. Chatterjee, for the Appellant; P.K. Sen, B.S. Bagchi and Subimal Dutt, for the Respondent

Judgement

P.K. Banerjee, J.

In this rule the petitioner prays for a writ in the nature of mandamus commanding the respondents to implement the order of the learned District Judge (Special Judge) in the Estates Acquisition Appeal No. 16 of 1967. The petitioner's brother Jiwandas P. Dutta, was the owner of about 133.35 acres of lands and also some tenanted lands in Mouza Bhaluka, J.L. No. IPS. Amdanga and also in Mouza Maricha, J.L. No. 5, district 24-Parganas. The said lands vested in the State by a Government notification being No. 12538-L dated August 16, 1954 with the enforcement of the West Bengal Estates Acquisition Act, 1953 (West Bengal Act 1 of 1954) with effect from 15th April, 1955. Thereafter notice u/s 10(2) was served on the petitioner's predecessor-in-title by which he was required to deliver up possession of those lands. In pursuance of the said notices it is alleged that possession was obtained by the respondents and the certificate of possession was granted to the petitioner by the respondents and

the compensation Assessment Roll was prepared by the settlement Camp "2(C), Barasat, District 24-Parganas" The brother of the petitioner filed an objection u/s 15/1(a) of the said Act and the said objection was numbered as objection Case No. 355. Jiwandas P. Dutta however died on 45th September, 1964, and the petitioner was substituted in his place and stead in the said proceedings under the said Act. The respondent No. 2, the compensation Officer at Barasat by order dated 19th July, 1965 and December 18, 1965, awarded compensation in favour of the petitioner for about Rs. 39,000/-. The petitioner being aggrieved by the said Judgement and order preferred an appeal before the Special Judge, and the appeal was registered as Estates Acquisition Appeal No. 21 of 1966. The learned district Judge at Alipore (Special Judge), allowed the appeal by his judgment and order dated February 29, 1967 and remanded the case back to the respondent No. 2 for rehearing of the same. Respondent No. 2 re-heard the matter and again passed an order for assessing the compensation of Rs. 42,000/- and an appeal was again taken by the petitioner to the Learned District Judge (Special Judge) under the Act and the said appeal was numbered as Appeal No. 16 of 1967. The learned District Judge (Special Judge) by order dated 31st July, 1969, set aside the order of respondent No. 2 compensation Officer and awarded the compensation to the petitioner to the tune of Rs. 1,28,584/- and the usual statutory interest thereon from the date of vesting. But it appears, however, against that order enhancing the compensation from Rs. 42,000/- to Rs. 1,28,000/- no appeal was taken by the State Government under 20(2) of the West Bengal Estates Acquisition Act. It is stated before me an application was moved by the State Government against the said order; but unfortunately, it is stated by Mr. Bagchi, that the said application was rejected on the ground of delay. But still the State Government sat on it and did not pay any compensation to the petitioner. Hence the petitioner moved this Court and obtained the present Rule with a direction on the State Government by writ or mandamus to make the payment which is the State Government's liability to pay to the petitioner on the basis of the order already passed. Mr. Sen on behalf of the petitioner contended that the State Government has taken the possession of the lands which have been vested in the State though assessment of compensation has been made and appeal was taken by the petitioner which succeeded in favour of the petitioner. Thereafter application challenging the order of compensation at Rs. 1,28,000/- failed but still the State Government is not making any payment whatsoever as compensation to the petitioner in respect of the lands which are admittedly vested in the State and the State has taken possession thereof. Mr. Sen further contended that the order passed by the (Special Judge) u/s 17 is not an appealable order and as such the State Government could not prefer an appeal. In my opinion, Mr. Sen's argument is that the order passed by the learned Special Judge is without jurisdiction. If that is so, it was open for the State Government to challenge the order before me. It is now clear to me that the State Government did challenge the same before this Court but the said application was rejected by this Court under Article 227 of the Constitution of India on the ground of delay. Therefore, so far as challenge of jurisdiction of the

order of the Special Judge is concerned this is not now open to the State Government to argue that the order is without jurisdiction. Once the petition having failed in this Court it appears to me that the order is binding and must have to be acted upon and the respondents cannot reagitate the question collaterally in an application moved by the petitioner for implementation of the order passed in favour of the petitioner. Mr. Sen however contended that the order of the learned District Judge was wrong and he cannot pass an order u/s 15 (1) (a) of the West Bengal Estates Acquisition Act. Section 15(1)-(A) is in the following terms:-

(a) an intermediary may file before the compensation officer an objection in writing in the prescribed form in respect of any entry therein, or any omission therefrom relating to his estates, interests, or income.

2. Section 15(1) (a) provides for filing an objections before the Compensation Officer within one month from the date of the publication of the Compensation Assessment Roll u/s 14 and after hearing the objection the Compensation Officer must assess the compensation in accordance with section 17 of the Act. Against the assessment of compensation by the Compensation Officer u/s 15 and 15(a) or under proviso (b) of subsection (2) of Section 25 an appeal lay to the Special Judge. The Compensation Officer did assess the compensation for Rs. 42,000/-. The appeal was taken by the petitioner to the Special Judge. The Special Judge has made an order for fresh fixing the amount of compensation u/s 17 of the Act. The Compensation Officer must assess the compensation on the basis of provision of section 17 of the Act. The computation of compensation is only u/s 17 of the Act. Mr. Sen argues that the order is without jurisdiction I cannot agree with Mr. Sen's contention. An appellate tribunal has the same power to assess compensation as Compensation Officer because he is the appellate authority to the Compensation Officer itself. Otherwise the appellate power of the appeal court will be more or less nugatory and no order can be passed even if in the opinion of the appellate tribunal the assessment of compensation by the Compensation Officer was wrong. In my opinion, therefore, there is no merit in the contention of Mr. Sen that appellate officer should have sent the case back to the Compensation Officer for assessment of the compensation. It is made clear by the appellate order that the Compensation Assessment Roll must be modified according to the judgement of the Special Judge u/s 20 of the West Bengal Estates Acquisition Act.

3. Mr. Sen further contended that final assessment Roll has not been finally published and the petitioner is not entitled to the compensation as directed by the appeal court. It is for the Compensation Officer to modify compensation Roll as was directed by the appellate officer. I, therefore, direct as follows: Compensation Officer must correct the compensation Roll or modify the same as has been directed by the Special Judge in the Estate Acquisition Appeal No. 16 of 1967 and correct the compensation Roll accordingly within two months from date and the respondents must pay according to the compensation as modified by the Special Judge to the

petitioner the compensation in accordance with law within three months thereafter. Before making the payment the petitioner must give security to the satisfaction of Collector, 24-Parganas, for a sum of Rs. 1,28,000/-. The security must be given within a month from the date of the finally publication of the Compensation Roll and on such security being given in the State Government must make the payment to the petitioner the same as directed aforesaid. The security furnished by the petitioner will be renewed from year to year. This order is without prejudice to the State Government's right to move in any other forum and dispose of the same in accordance with law if they have any right in any other provisions of the statute. The petitioner further contended that the State Government is bound by the appellate order and they cannot reopen the assessment of compensation in any other proceeding under the Act. Whether Mr. Sen is right or wrong I am not deciding the question here and I kept that open.

The Rule is made absolute to the extent indicated above. There will be no order as to costs.