

(2007) 08 CAL CK 0068

Calcutta High Court

Case No: Writ Petition No. 3298 (W) of 2004

SM. Dipti Chanda

APPELLANT

Vs

State of West Bengal

RESPONDENT

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**Date of Decision:** Aug. 9, 2007**Acts Referred:**

- Land Acquisition Act, 1894 - Section 23, 9, 9(3A), 9(3B)
- West Bengal Land (Requisition and Acquisition) Act, 1948 - Section 3, 4, 4(1), 5(3)

**Citation:** (2008) 1 ILR (Cal) 137**Hon'ble Judges:** Jayanta Kumar Biswas, J**Bench:** Single Bench**Advocate:** Samiran Giri, for the Appellant; Amrita Sinha, for the Respondent**Final Decision:** Dismissed

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**Judgement**

Jayanta Kumar Biswas, J.

The Petitioner in this writ petition dated February 27, 2004 is seeking a mandamus directing the Respondents to give her vacant and peaceful possession of the immovable property at premises No. 9, Sarsuna Paddy Land and to pay her compensation at the market rate. She is also seeking a writ of certiorari quashing the requisition order and acquisition notice issued and published by the authorities with respect to the property.

2. Her case is this. On October 7, 19(33 she purchased the land. Then she applied for mutation, and after her name was mutated she started paying rent from the year 1964. She also started paying municipal rates and taxes. On September 28, 1965 the Land Acquisition Collector 24 Paragarias (now South 24 Parganas) initiated certain proceeding under the West Bengal Land (Requisition and Acquisition) Act, 1948. Subsequently the proceedings were dropped. But proceedings under that Act were again initiated in 1979. On February 28, 1985 certain order was made. No notice, however, was served on her, and she was not paid any compensation.

3. In 1996 she moved this Court by filing a writ petition, registered as CO. No. 5756 (W) 1996, which was disposed by an order dated July 2, 1998. The order requisitioning the property was quashed on the ground that the acquisition proceedings had not been concluded before expiry of life of the 1948 Act. It was, however, said that if any acquisition proceedings were initiated by issuing notice u/s 4 of the Land Acquisition Act, 1894, and if such proceedings did not lapse by efflux of time, then such proceedings should be concluded within six months from the date of communication of that order. It was ordered that in the absence of any acquisition proceedings and conclusion thereof, the authorities would hand over peaceful possession of the land to the Petitioner. Order was made for payment of compensation, on conclusion of the acquisition proceedings, in terms of the provisions in Section 23 of the Land Acquisition Act, 1894. There is nothing to show that after that order the Petitioner took any steps or anything happened giving rise to a cause of action entitling her to take out the present writ petition.

4. The Respondents are contesting the writ petition by filing opposition. In compliance with order dated June 19, 2006 they have also filed a supplementary opposition. Their case is this. LA case No. II/67 of 1979-80 was initiated by issuing an order u/s 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948. Possession of the land was accordingly taken by the authorities on December 28, 1979 and the land was delivered to the requiring body, the West Bengal Housing Board, on December 29, 1979. The requisite notice u/s 4(1a) of the 1948 Act was published in the official gazette on February 28, 1985. The land thus stood vested in the government, Section 4(1a) notices were also given to the recorded owners. Then requisite notices u/s 5(3) giving an opportunity of appearing in the proceedings in which the collector proposed to make the award were given to the recorded owners. Such notices were issued on March 27, 1987. Thereupon the award was made and declared, and compensation was paid to most of the persons in whose favour the award was made.

5. Counsel for the Petitioner says that since no notice in connection with the requisition and acquisition of the land was ever given to the Petitioner, she could neither participate in the acquisition proceedings, nor take necessary steps for seeking a reference for increase in the amount of compensation. His argument is that notices were given to the amount of compensation. His argument is that notices were given to the vendors and compensation was paid to them, though they were not entitled to get compensation. I do not find any merit in the arguments. The requisition order was issued in 1979 and possession of the land was taken by the authority also in 1979. There is absolutely no reason to say that the Petitioner, if she was the owner having actual physical possession of the property, had no knowledge of the Section 3 order that was issued and duly published. Facts connected with the Section 3 order have been verified by her as true to her knowledge, Section 4(1a) notice was duly issued and published in the official gazette. It was done as February 28, 1985. Facts connected with that notice have also been verified by her as true to

her knowledge.

6. It is therefore apparent that though she had knowledge of the requisition and acquisition proceedings, instead of participating in the proceedings or questioning the steps taken by the collector, she took out a grossly belated writ petition only in the year 1996. Unfortunately, in that case none appeared for the authorities, and the writ petition was disposed of ex parte. It is apparent that the order dated July 2, 1998 was passed in the 1996 writ petition in ignorance of the fact that the acquisition proceedings initiated in connection with this S3 order had stood concluded in the year 1987, i.e. long before the 1948 Act expired. It expired in 1997 when the Land Acquisition Act, 1894 was amended by the State Government for inserting Sub-sections (3A) and (3B) into Section 9 of the 1894 Act. Proceedings initiated under the 1948 Act were to be continued, in view of the state amendment, from the stage of Section 9 of the 1894 Act.

7. But then in the present case there was no requirement to proceed under the amended provisions, since the acquisition proceedings had stood concluded as back as 1987 when the collector after issuing notice to the persons interested made and declared the award and paid the compensation to the persons in whose favour the award was made. Thus, in effect, from the order made in the Petitioner's previous writ petition she was not to derive any real benefit, and she actually did not. Though there was no fresh cause of action she took out this writ petition. I do not see any reason to accept her case that having not been served with Sections 4(1a) and 5(3) notices issued by the collector under the 1948 Act, she is entitled to question the requisition order issued in 1979 and the acquisition notice issued and published in 1985. In my opinion, this is an utterly frivolous writ petition, and hence it should be dismissed.

8. For these reasons, I dismiss the writ petition. I am, however, not inclined to make any order for costs. Hence there shall be no order for costs in it.

9. Since supplementary affidavit-in-opposition affirmed by the Respondents has not been filed in Court, a copy thereof, made from the copy produced by counsel for the Petitioner, shall be kept with the records.

10. Urgent certified xerox copy of this order, if applied for, shall be supplied to the parties within three days from the date of receipt of the file by the section concerned.