

09 **01.09.
2023**

Ct. No. 04

Ab

FAT 69 of 2018
IA No. CAN 2 of 2018 (Old No. CAN 2745 of 2018)

State of West Bengal
Vs.
Susama Das and others.

Mr. Soumitra Bandyopadhyay,
Mr. Suman Ghosh,
Mr. Parikshit Goswami.
... for the appellant.

Mrs. Sulekha Mitra,
Mr. Manas Kumar Das.
... for the respondents.

Re: CAN 2 of 2018 (Old No. CAN 2745 of 2018)

The instant appeal is filed by the State assailing an order of the Land Acquisition Court dated 9th August 2016 on various grounds including that the market value as assessed by the Land Acquisition Court is too exorbitant and not in consonance with law.

Since a statutory right of first appeal has been provided and the Court is required to hear out the same, an application is taken out for stay of operation of the judgment and order impugned in the instant appeal.

Learned Advocate appearing for the appellant submits that a substantial amount has already been paid to the respondents and, therefore, the Court should pass an order of stay of the operation of the judgment and order of the Land Acquisition Court pending the instant appeal.

On the other hand, learned Advocate for the respondents submits that the Court should not pass a blanket order of stay because of the nature of the impugned order and, therefore, the appellant should be put to terms. It is further submitted that since the appeal was filed way back in the year 2018 along with an application for condonation of delay and there being no

order of stay, an execution case has been filed by the respondents to recover and realize the amount awarded by the Land Acquisition Court being Land Acquisition Execution Case No. 10 of 2016.

It is no longer *res integra* that the judgment and order passed by the Land Acquisition Court on the basis of a reference made under Section 18 of the Land Acquisition Act is a money decree and, therefore, the Court should not pass a blanket order of stay unless the appellant is directed to put a security or put on terms, as the Court may deem fit and proper.

On the last occasion, we invited the attention of both the Counsels on such proposition of law and directed them to file the total amount to be arrived in terms of the impugned judgment and order. There appears the variation in the calculation of the amount in terms of the impugned judgment and order and we find discrepancy in the calculation submitted by the appellant. According to the respondents, the total amount as on 31st July 2023 stands at Rs. 2,31,60,032.05/-, out of which a sum of Rs. 80,32,605/- has been paid to the respondents. The balance amount is required to be deposited by the appellant as a condition precedent for stay of the execution proceeding.

Accordingly, the appellant is directed to deposit Rs. 1,51,27,427.05/- with the Registrar General of this Court within four weeks from date. On deposit of the said amount, the Registrar General shall invest the same in an interest bearing fixed deposit in any nationalized bank and shall continue to renew the same until further order passed in the instant appeal.

There shall be an unconditional stay of the Land Acquisition Execution Case No. 10 of 2016 for a period of four weeks from date or until further order, whichever is earlier. In the event, the deposit is made within the time indicated herein above, the said execution case shall remain stayed until the disposal of the instant appeal.

In default of the deposit within the time indicated herein above, it is open to the respondents to proceed with the execution case and the Executing Court shall dispose of the same irrespective of the fact that the appeal is pending before this Court.

With these observations, the application for stay being CAN 2 of 2018 (Old No. CAN 2745 of 2018) is disposed of.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)