

28.11.2024
Item No.19
gd/ssd

WPA/20262/2017
NIMAI DAS & ANR.
VS
STATE OF WEST BENGAL & ORS.

Mr. Amit Kumar Pan,
Ms. Tanusri Santra
..for the Petitioners.

Mr. Soumitra Bandyopadhyay,
Mr. Aniruddha Sen
..for the State.

The petitioners have prayed for issuance of mandamus commanding the respondents to initiate a fresh proceeding under the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (for short “the 2013 Act”) and to determine and pay compensation in terms of the provisions of the 2013 Act.

The petitioners claim that their predecessor-in-interest namely, Debendra Nath Das was the owner of plot nos.264, 264/376 and 260 measuring about 0.14 acres, .022 acres and 0.12 acres of land within Mouza Laxmipur Abad, J.L. no.71 under Police Station Namkhana at present Frerzergange Costal in the District of 24 Parganas (South). The said Debendra Nath Das died intestate on April 22, 1982 leaving behind him surviving the petitioners as his only heirs and heiresses. For the purpose of

construction of ring bandh at Mouza- Laxmipur Abad a proceeding under the West Bengal Land (Requisition and Acquisition) Act, 1948 (for short the 1948 Act) bearing Case No. LA-II/30 of 1974-75 was initiated. The order under Section 3(1) of the 1948 Act was duly served upon the original owner. Possession of the property was taken on 22nd April, 1975. It is the case of the petitioners that no notice under Section 4(1a) of the 1948 Act was published nor was it served upon the recorded owners. It is the further case of the petitioners that the authorities did not take any steps for acquiring the property by taking recourse to the provisions of Sections 9(3A) or 9(3B) of the Land Acquisition (West Bengal Amendment) Act, 1997. In the meantime the Land Acquisition Act, 1894 stood repealed and the 2013 Act has come into force. The petitioners claim that the State Government took possession of the aforesaid plots by invoking the provision of requisition under the 1948 Act but thereafter chose not to acquire the same in accordance with law.

Mr. Pan, learned Advocate appearing for the petitioners submits that the possession of the property which was taken over by invoking the provisions of Section 3(1) of the 1948 Act and the State could not have been retained possession

thereof for an indefinite period without payment of compensation to the petitioners.

Mr. Pan further submits that the property of the petitioners have been utilized for the purpose for which the order under Section 3(1) of the 1948 Act was issued.

Mr. Pan concludes by submitting that a direction should be passed upon the State Government to acquire the property in terms of the provisions laid down under the 2013 Act.

Mr. Bandyopadhyay, learned Advocate for the State does not dispute the fact that the property of the petitioners have been utilized for the purpose for which an order under Section 3(1) of the 1948 Act was issued.

Mr. Bandyopadhyay further submits that the Government of West Bengal has framed a policy for direct land purchase vide Memorandum dated February 25, 2016 which in order to ensure the optimal utilization of public funds and early implementation of Important Infrastructure Projects.

Mr. Bandyopadhyay, on instruction, submits that the State Government is agreeable to purchase the property of the petitioners in terms of the said policy.

In reply, Mr. Pan, learned Advocate appearing for the petitioners submits that the petitioners herein

are also willing to accept the proposal of Mr. Bandyopadhyay.

Heard the learned Advocates for the parties and perused the materials placed.

From the affidavit filed by the respondents it is evident that the possession of certain plots along with other plots were handed over to the requiring body on April 24, 1975 except 0.025 acres in plot no.261 and 0.025 acres in plot no.262 as there were structures on the said plots. It has been specifically admitted in the said affidavit that draft notice under Section 4(1)(a) of the 1948 Act was prepared for an area of 3.01 acres in total but due to non-publication of notification in the Calcutta Gazette further proceeding was not made and the case was not concluded.

Thus, it is evident that the possession of the properties which were the subject matter of the order passed under Section 3(1) of the 1948 Act were taken over and the same were utilized for the purpose of construction of river bandh at Mouza- Laxmipur Abad. The possession of the land in question was taken by invoking the provisions of requisition under the 1948 Act. The said Act subsequently stood repealed. No steps were taken by the State Government for acquiring the plots in question by resorting to the provisions of sub-sections (3A) or

(3B) of Section 9 of the Land Acquisition (West Bengal Amendment) Act, 1997.

Since the plots of the land owners have been taken and utilized for a particular purpose, the State Government is duty bound to pay compensation to the land owners.

In view of the fact that the State Government is agreeable to purchase the land in question from the land owners and it has also been submitted by Mr. Pan, learned Advocate for the petitioners that the petitioners do not have any objection to such proposal this court is of the considered view that a direction should be passed upon the State Government to take appropriate steps in terms of the Memorandum dated February 25, 2016.

For the reasons as aforesaid, the writ petition stands disposed of with the following directions:

The District Magistrate, 24-Parganas (South), being the 2nd respondent is directed to take steps in terms of the Memorandum dated February 25, 2016 to purchase the land from the land owners directly as per the procedure mentioned in the said Memorandum and to complete the entire exercise including payment of the amount to the petitioners or the person entitled as expeditiously as possible but positively within a period of four

months from date of receipt of a server copy of this order.

There will be no order as to costs.

Urgent certified copy of this order, if applied for, be given to the learned advocates for the parties on usual formalities.

(HIRANMAY BHATTACHARYYA, J.)