

IN THE HIGH COURT AT CALCUTTA

**Civil Appellate Jurisdiction
(Appellate Side)**

M.A.T. 207 of 2018

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**I.A. No.: CAN/1/2018
(Old No: CAN/3861/2018)**

+

**IA No: CAN/2/2018
(Old No: CAN/3959/2018)**

State of West Bengal & Ors.

Vs.

Asit Das & Ors.

With

MAT 307 of 2018

+

**IA No: CAN/1/2018
(Old No:CAN/3958/2018)**

+

**IA No: CAN/2/2018
(Old No: CAN/3964/2018)**

State of West Bengal & Ors.

Vs.

Asit Baran Sarkar & Ors.

With

MAT 210 of 2018

+

IA NO:CAN/1/2018 (Old No:CAN/3864/2018)

+

CAN/2/2018 (Old No:CAN/3962/2018)

State of West Bengal & Ors.

Vs.

Asit Baran Sarkar & Ors.

With

MAT 269 of 2018

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IA NO:CAN/1/2018 (Old No:CAN/3957/2018)

+
CAN/2/2018 (Old No:CAN/3963/2018)
State of West Bengal & Ors.

Vs.
Nikhil Sarkar & Ors.

With
MAT 208 of 2018

+
IA NO: CAN/1/2018 (Old No :CAN/3862/2018)

+
CAN/2/2018 (Old No: CAN/3960/2018)
State of West Bengal & Ors.

Vs.
Basanti Sarkar & Ors.

With

MAT 209 of 2018
IA NO:CAN/1/2018 (Old No: CAN/3863/2018)

+
CAN/2/2018 (Old No: CAN/3961/2018)
State of West Bengal & Ors.

Vs.
Basanti Sarkar & Ors.

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Apurba Sinha Ray

For the Appellants/State : Mr. Rabindra Narayan Dutta, Adv.
Mr. Hare Krishna Halder, Adv.

For the P.W.D. : Mr. Susovan Sengupta, Adv.
Mr. Subir Pal, Adv.

Judgment On : 20.07.2023

Arijit Banerjee, J.:

1. All these appeals involved similar issues of fact and law and hence have been taken up together for hearing and disposal. We will refer to the records of one of the appeals being **MAT 207 of 2018 (State of West Bengal and Ors. v. Asit Das & Ors.)** for the purpose of disposing of all the

appeals. Land of the respondents/writ petitioners was taken over by the State sometime in the year 1982 by requisitioning the same under the provisions of the West Bengal Land (Requisition and Acquisition) Act, 1948 (in short the Act II of 1948). Notice under Section 3(1) of Act II of 1948 was issued sometime in the year 1976.

2. The project for which the land was requisitioned was abandoned by the requiring body. However, the land was never returned to the writ petitioners and a public road has been constructed thereon. No acquisition proceedings, whether under Act 2 of 1948 or under Act I of 1894 were ever initiated. Some rent compensation may have been paid by the State to the writ petitioners but no compensation for utilisation of their land was paid.

3. Being aggrieved, the writ petitioners approached the learned Single Judge in the year 2015 by filing W.P. No. 24940(W) of 2015. The concerned Block Land and Land Reforms Officer, Arambagh, pursuant to an order dated September 30, 2015 filed a report after conducting requisite survey.

4. On June 19, 2017, the writ petition was taken up for final disposal and the impugned order was passed. The learned Judge found from the report of the concerned BL & LRO that a road has been constructed on the land of the writ petitioners. The learned Judge noted that admittedly no land acquisition proceeding had been initiated for utilising the land of the writ petitioners and no compensation had been paid to them. Accordingly, the learned Judge disposed of the writ petition by directing the Land Acquisition Collector "to initiate the land acquisition proceeding against the petitioners

under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and to pay compensation to the petitioners for acquiring the land for construction of the road within a period of 12 weeks from the date of communication of the order.”

5. Being aggrieved, the State of West Bengal and its concerned officers have come up in appeal.

6. The material facts of the case are not in dispute. Land of the writ petitioners was requisitioned under Section 3 of Act 2 of 1948. The project for which the land was requisitioned never took off and was abandoned. Although the land was formally de-requisitioned prior thereto, a public road was constructed on the land. The land was never acquired either under the provisions of Act 1 of 1894 or Act 2 of 1948.

7. Learned Advocate for the appellants/State submitted that the writ petition should have been dismissed on the ground of delay and/or laches alone. The land was requisitioned in connection with LA Case no. 1-35/72-73, sometime in 1972-73. The writ petitioners approached the writ Court only in the year 2015, after a delay of more than 40 years. It was submitted that a right not exercised for a long time is non-existent. Even when no limitation period is prescribed by any statute relating to certain proceedings, the Courts have coined the doctrine of laches and delay as well as the doctrine of acquiescence and have non-suited litigants who approached the Court belatedly without any justifiable explanation for the inordinate delay.

Delay defeats equity. Reliance was placed by learned Counsel for the State on the following decisions:-

(i) U.P. Jal Nigam & Anr. v. Jaswant Singh & Anr., reported at (2006) 11 SCC 464.

(ii) Rajeev Suri v. Delhi Development Authority and Ors., reported at 2021 SCC online SC 7.

(iii) Indore Development Authority v. Manoharlal & Ors., reported at (2020) 8 SCC 129.

8. While it is true that the Courts are reluctant to enforce a stale claim, it also cannot be countenanced that the State shall take over possession of a citizens land and utilise the same without paying due compensation therefor to the owner of the land. While right to property may not be a fundamental right any more, it is still a constitutional right. Article 300A of the constitution provides that no person shall be deprived of his property save by authority of law. In fact, right to property has now been recognised as a human right. Expropriation by the State without compensating the owner of the land is not permitted under the laws of the country. The State must endeavour to protect the constitutional rights of its citizens and not act in any manner in derogation of such rights.

9. Once the State utilised the land of the writ petitioners, it was a duty of the State to acquire the land following due process of law and pay compensation to the writ petitioners therefor. Why would it be necessary for a citizen who has been deprived of his property to approach the Court of law

praying for an order directing the Government to pay compensation for the property taken over by the Government? Any responsible Government must act fairly, reasonably and not arbitrarily and should on its own ensure that due compensation is paid to a citizen for the loss of his land which has been utilised by the Government, albeit for a public purpose. It would be preposterous if the State is permitted to contend that since the land loser was sleeping over his rights and did not approach a legal forum promptly, he forfeits the right to receive compensation for the land that the Government has taken over and is not in a position to return the same to the owner thereof.

10. It was further contended on behalf of the State that even if the Court is not inclined to allow the appeal and dismiss the writ petition on the ground of delay and laches, equities must be balanced and the writ petitioners cannot be permitted to reap benefit of the 2013 Act. Learned Counsel submitted that some kind of formula should be applied which would not cause undue prejudice to either the writ petitioners or the State. Learned Advocate referred to a decision of a Division Bench of this Court, dated August 23, 2017, rendered in ***MAT 86 of 2016 (The State of West Bengal and Ors. v. Niladri Chatterjee and Ors., reported at AIR 2018 CAL 244)***. The relevant portion of the said Judgement reads as follows:

“If one looks carefully, one would notice that in the facts of the instant case, the land was requisitioned under LA Case No. 126R/1976-77 and was handed over to the Requiring Body on 29.04.1978 for construction of Ajoy Right Ex-Zamindary

Embankment, Sagira to Kogram. Notification under section 4(1a) of the Act of 1948 was subsequently published in the Calcutta Gazette on 2nd July, 1993. Although an amount of Rs. 20,76,183/- was sought for from the Requiring Body, i.e., Executive Engineer, Damodar Head Works Division, Durgapur-2, but the said authority simply failed to place the fund. Subsequently, after expiry of the Act of 1948, the Collector of Burdwan simply abdicated his statutory duty to issue notice under section 9(3B) of the Act of 1894. This could be either due to sheer callousness or negligence on the part of the Collector of Burdwan. Undoubtedly, it is only due to the Collector's failure to issue notice under section 9(3B) of the Act of 1894, the land acquisition proceeding stood lapsed. However, whether *ipso facto* such a lapse translates into a claim for compensation under the provision of the Act of 2013 can be answered simply by visiting section 24 of the Act of 2013. It will be noticed from a plain reading of the said section that there is a phrase, "proceedings initiated under the Land Acquisition Act, 1894". In the facts of the instant case, it cannot be held - by any stretch of imagination - that proceedings were ever "initiated" under the said Act of 1894. As such, abdication of statutory duty on the part of the Collector of Burdwan to issue notice under section 9(3B) of the Act of 1894 - either due to sheer callousness or negligence on his/her part - cannot *ipso facto* translate into a claim for compensation under the Act of 2013. We do not know what prevented the writ

petitioners from approaching the writ Court any time between initiation of L.A. Case No. 126R/1976-77 and the year 2014, for the purpose of seeking appropriate relief(s). Merely by making two representations - one on 20th December, 2011 and the other on 30th July, 2014 - they have sought for a issuance of a writ in the nature of mandamus for getting compensation under the Act of 2013 upon filing a writ petition only in the year 2014, by which time the said Act of 2013 has already come into force. We find that in the facts of the instant case, the writ petitioners were sleeping over their valuable right to get compensation for decades. As such, they simply cannot approach the writ Court one fine morning when the Act of 2013 has come into force in order to seek compensation under the said Act of 2013, upon invoking section 24 of the said Act of 2013, when proceedings were never "initiated" under the Act of 1894.

However, the respondents / writ petitioners are certainly entitled to be paid compensation as applicable in their case. From the written instruction - which was taken notice of by the learned Single Judge - we find that a sum of Rs.20,76,183/- was sought for from the Requiring Body, (i.e., Executive Engineer, Damodar Head Works Division, Durgapur-2) for payment of compensation to the writ petitioners. The said sum, together with interest @ 8 % per annum - to be calculated from the date of taking possession of the land-in-question, i.e., 29th April, 1978 (as admitted by the

appellants in Ground V of the Memorandum of Appeal) till date of disbursement of payment - shall be paid within a period of eight weeks from date to the respondents / writ petitioners by the competent authority of the State.”

11. We have not called upon the respondents/writ petitioners to make submission.

12. The decision of the Division Bench of this Court referred to by learned Counsel for the State is completely distinguishable on facts. In that case a sum of Rs. 20,76,183/- was quantified to have been payable to the land losers. In the present case, there is no such quantification by any competent authority.

13. It is not in dispute that in the present case no acquisition proceeding was ever initiated in respect of the land of the writ petitioners under any relevant statute. It is also an admitted position that the State has utilized the land of the writ petitioners but has not paid them any compensation. The State is not in a position to return the land to the writ petitioners. The State must compensate the writ petitioners who have lost their precious land. The State has in fact taken over the lands of the writ petitioners without following due process of law. This *de facto* acquisition must be regularized by initiating proceedings under the law which presently governs land acquisition by the State. That law is the 2013 Act.

14. As regards the State's contention regarding delay and laches on the part of the writ petitioners in approaching Court claiming compensation for

loss of their land, I can do no better than quote liberally from the decision of the Hon'ble Supreme Court in the case of ***Vidya Devi v. The State of Himachal Pradesh & Ors. reported at (2020) 2 SCC 569=AIR 2020 SC 4709***. In the aforesaid case the State had taken over the land of the appellant in 1967-68 for constructing a major road without taking recourse to acquisition proceedings or following due process of law. The construction of the road was completed by 1975. The appellant did not file any proceedings. Some similarly situated persons whose lands had also been taken over filed a writ petition before the Himachal Pradesh High Court. The High Court directed the State to acquire the lands of the writ petitioners under the Land Acquisition Act, 1894. Pursuant to such order, the State initiated acquisition proceedings under the 1894 Act only with respect to the lands of the writ petitioners who approached the High Court. The appellant filed a writ petition in the Himachal Pradesh High Court in 2010. The State in its reply took the point of adverse possession and also the point that the writ petition was barred by laches. The High Court dismissed the writ petition holding that the same involved disputed questions of law and fact. The appellant's review petition was also dismissed by the High Court. Accordingly the appellant approached the Hon'ble Supreme Court.

The Hon'ble Supreme Court, held, inter alia, as follows:-

“10.1. The Appellant was forcibly expropriated of her property in 1967, when the right to property was a fundamental right guaranteed by Article 31 in Part III of the Constitution.

Article 31 guaranteed the right to private property, which could not be deprived without due process of law and upon just and fair compensation.

10.2 *The right to property ceased to be a fundamental right by the Constitution (Forty Fourth Amendment) Act, 1978, however, it continued to be a human right in a welfare State, and a Constitutional right Under Article 300A of the Constitution. Article 300A provides that no person shall be deprived of his property save by the authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. The obligation to pay compensation, though not expressly included in Article 300A, can be inferred in that Article.*

To forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the Constitutional right under Article 300A of the Constitution.

Reliance is placed on the judgment in Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chennai MANU/SC/0610/2005: (2005) 7 SCC 627, wherein this Court held that:

6. ... *Having regard to the provisions contained in article 300-A*

of the Constitution, the State in exercise of its power of “eminent domain” may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid.

In N. Padmamma v. S. Ramakrishna Reddy

MANU/SC/7731/2008 : (2008) 15 SCC 517, this Court held that:

21. If the right of property is a human right as also a constitutional right, the same cannot be taken away except in accordance with law. Article 300-A of the Constitution protects such right. The provisions of the Act seeking to divest such right, keeping in view the provisions of Article 300-A of the Constitution of India, must be strictly construed.

In Delhi Airtech Services Pvt. Ltd. and Ors. v. State of U.P. and Ors.

MANU/SC/0956/2011 : (2011) 9 SCC 354, this Court recognized the right to property as a basic human right in the following words:

30. It is accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic oppression of the Government. Jefferson was of the view that liberty cannot long subsist without the support of property.

“Property must be secured, else liberty cannot subsist” was the opinion of John Adams. Indeed the view that property itself is the seed bed which must be conserved if other constitutional values are to flourish is the consensus among political thinkers and jurists.

In Jilubhai Nanbhai Khachar v. State of Gujarat MANU/SC/0033/1995 : (1995) Supp. 1 SCC 596 this Court held as follows:

48. ... In other words, Article 300-A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There has to be no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation.

10.3. *In this case, the Appellant could not have been forcibly dispossessed of her property without any legal sanction, and without following due process of law, and depriving her payment of just compensation, being a fundamental right on the date of forcible dispossession in 1967.*

.....

10.5 *In a democratic polity governed by the Rule of law, the State could not have deprived a citizen of his property without the sanction of law. Reliance is placed on the judgment of this Court in *Tukaram Kana Joshi and Ors. v. M.I.D.C. and Ors.* MANU/SC/0933/2012 : (2013) 1 SCC 353 wherein it was held that the State must comply with the procedure for acquisition, requisition, or any other permissible statutory mode. The State being a welfare State governed by the Rule of law cannot arrogate to itself a status beyond what is provided by the Constitution.*

*This Court in *State of Haryana v. Mukesh Kumar* held that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multi-faceted dimension.*

.....

10.7. *The contention advanced by the State of delay and laches of the Appellant in moving the Court is also liable to be rejected. Delay and laches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the*

Court. Condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case. It will depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice.

In a case where the demand for justice is so compelling, a constitutional Court would exercise its jurisdiction with a view to promote justice, and not defeat it.

In Tukaram Kana Joshi and Ors. v. M.I.D.C. and Ors., MANU/SC/0933/2012 : (2013) 1 SCC 353 this Court while dealing with a similar fact situation, held as follows:

There are authorities which state that delay and laches extinguish the right to put forth a claim. Most of these authorities pertain to service jurisprudence, grant of compensation for a wrong done to them decades ago, recovery of statutory dues, claim for educational facilities and other categories of similar cases, etc. Though, it is true that there are a few authorities that lay down that delay and laches debar a

citizen from seeking remedy, even if his fundamental right has been violated, Under Article 32 or 226 of the Constitution, the case at hand deals with a different scenario altogether. Functionaries of the State took over possession of the land belonging to the Appellants without any sanction of law. The Appellants had asked repeatedly for grant of the benefit of compensation. The State must either comply with the procedure laid down for acquisition, or requisition, or any other permissible statutory mode.

15. In the facts of the present case, the State having deprived the writ petitioners of their property without following due process of law and without paying any compensation- which is really an act of expropriation, the State cannot be permitted to argue that the delay on the part of the writ petitioners in approaching the Court will cause imposition of greater financial burden on the State since in the mean time the 2013 Act has come into operation and holds the field. Had the State acted in accordance with law, it could have avoided the additional financial burden, if any, that may be foisted on it by reason of compensation being calculated in terms of the provisions of the 2013 Act. In this connection one may refer to the decision of a Coordinate Bench rendered on September 29, 2022 in **MAT 464 of 2018 (The State of West Bengal & Ors. v. Dilip Ghosh & Ors.)**.

16. In view of the aforesaid we find no infirmity in the judgments and orders under appeal. We affirm the same and dismiss the appeals. We however extend the time period for the Land Acquisition Collector, to comply with the order of the learned Single Judge within 12 weeks from date. The appeals and connected the applications being **M.A.T. 207 of 2018 I.A. No.: CAN/1/2018 (Old No: CAN/3861/2018) IA No: CAN/2/2018 (Old No:CAN/3959/2018), MAT 307 of 2018 IA No: CAN/1/2018 (Old No: CAN/3958/2018) IA No: CAN/2/2018 (Old No: CAN/3964/2018) , MAT 210 of 2018 IA NO:CAN/1/2018 (Old No:CAN/3864/2018) I.A. No: CAN/2/2018 (Old No:CAN/3962/2018), MAT 269 of 2018 IA NO: CAN/1/2018 (Old No: CAN/3957/2018) CAN/2/2018 (Old No:CAN/3963/2018), MAT 208 of 2018 IA NO: CAN/1/2018 (Old No: CAN/3862/2018) I.A. No: CAN/2/2018 (Old No: CAN/3960/2018), MAT 209 of 2018 IA NO: CAN/1/2018 (Old No: CAN/3863/2018) I.A. No: CAN/2/2018 (Old No: CAN/3961/2018)** are accordingly disposed of. There will be no order as to costs.

17. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Arijit Banerjee, J.)

I agree.

(Apurba Sinha Ray, J.)