

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

**W.P.O. 2289 of 2022
IA NO. GA 2 of 2023**

**The Kolkata Municipal Corporation And Ors.
VS
State Of West Bengal And Ors.**

With

**W.P.O. 2380 of 2022
Rameshwar Properties Private Limited
Vs
State Of West Bengal And Ors.**

For the K.M.C:

Mr. Alak Kumar Ghosh, Adv.
Mr. Ranajit Chatterjee, Adv.
Mr. Gopal Chandra Das, Adv,

For The Rameshwar Properties
Private Limited:

Mr. Suddhasatva Banerjee, Adv .
Mr. Soumabha Ghose, Adv
Mr. Pushan Kar, Adv.
Mr. Sagnik Majumdar, Adv.
Mr. Utpal Majumdar, Adv.
Ms. Ananya Das, Adv.
Ms. Shalmoli Ghosh, Adv.

For State:-

Mr. T.M Siddiqui, Ld. AGP
Mr. Naba Kumar Das, Adv.
Mr. Supratim Dhar, Adv.
Mr. Mrinal Kanti Ghosh, Adv.
Mr. Subhabrata Das, Adv.
Mr. D. Gomes, Adv.

Hearing Concluded on:

06.09.2023

Date :

03.10.2023

SUVRA GHOSH, J. :-

The subject matter of both the writ petitions being inter-woven, the writ petitions are taken up for consideration and disposal by a common judgment.

The Kolkata Municipal Corporation (for short KMC) who are the petitioners in W.P.O. No. 2289 of 2022, (hereinafter referred to as the first writ petition) seek issuance of a writ of mandamus directing the State respondents to recall/rescind/cancel the memorandum dated 29th December 2020, 29th June 2021, 9th August 2021, and 12th August, 2021 determining the rent compensation/occupation charges payable by the Corporation to the private respondent for the period 20th January, 2000 to 15th December 2013 in respect of premises no. 42, Ripon Street Kolkata – 700016. Rameshwar Properties Private Ltd, the petitioner in W.P.O. No. 2380 of 2022 (hereinafter referred to as the second writ petition) seeks cancellation/revocation of the letter issued by the first Land Acquisition Collector, Kolkata on 19th July, 2022, a declaration to the effect that the minimum rent/compensation charges of the premises in question should be at least Rs. 40 per square feet and a direction upon the KMC and the first Land Acquisition Collector, Kolkata to pay rent compensation charges already fixed, to the petitioner without prejudice to the petitioner's right to receive further compensation.

It is submitted on behalf of the KMC that the premises in question was requisitioned for a period of six months under Rule 75A of The Defence of India Rules framed under section 2(5) of the Defence of India Act, 1939 on 10th July, 1942 and a formal agreement was executed on 20th June, 1942 between

the then owner of the premises and the Governor of the province of Bengal and possession of the premises was taken over by the Government on 30th June, 1942. The possession was transferred to the Corporation of Calcutta on 4th March, 1945 and the Corporation has paid rent occupation charges all along. The premises was requisitioned under section 3(1) of the West Bengal Premises Requisition and Control (Temporary Provision) Act, 1947 by a notice issued on 23rd March, 1983 and order of requisition was passed on 25th March, 1983, the property thereby coming under the control and disposal of the first Land Acquisition Collector, Kolkata. Upon hearing the owner of the property Rameshwar Properties Private Limited (for short the Company), the rent compensation was assessed and duly approved by the Government to the tune of Rs. 344.69 per month with effect from 1st April, 1983. The requisition was challenged by the Company before this Court in a writ petition being W.P. No. 2057 of 1997 and during pendency of the writ petition, the State Government published a notice under section 4 of the Land Acquisition Act, 1894 on 20th January, 2000 following which a notice of joint inspection and measurement held on 22nd June, 2001 was served upon the KMC. The KMC was not informed with regard to fixation of valuation of the land or granting of award. In an earlier writ petition being W.P. No. 1605 of 2003 this Court held that since the proceedings under the Act of 1894 could not be completed within the statutory period and had lapsed, the Company was entitled to occupation charges for the period 20th January, 2000 till delivery of possession of the property. The KMC made payment of the total sanctioned amount and rent compensation till 31st July, 2012 and was requested by the Land Acquisition

Collector by a notice dated 6th September, 2012 to vacate the property in question which was refused by the KMC since a fresh proposal for acquisition of the property under the 1894 Act was made to the Collector on 4th September, 2012. Pursuant to the order of this Court in W.P. No 1605 of 2003 the Collector calculated occupation charges from 20th January, 2000 to 27th December, 2013 and requested the KMC to arrange for necessary funds for payment of the same (Rs. 88,20,741/-). A fresh calculation of occupation charges was made by the Collector with the assistance of a surveyor and valuer to the tune of Rs. 74,31,444/-. In the mean time, the KMC carried the order of the Hon'ble Single Judge dated 26th June, 2012 in appeal and the Hon'ble Division Bench, by an order passed on 25th March, 2015, observed that the Act of 2013 would apply to determination of compensation payable to the Company. A subsequent writ petition being W.P. No. 327 of 2016 filed by the Company seeking direction upon the KMC to pay the unauthorised occupation charges for the period 20th January, 2000 till possession was handed over to it, was dismissed. Revised award calculated by the First Land Acquisition Collector was paid by the KMC in two instalments following which possession of the land was made over to them. By an order passed on 28th January, 2020 in a writ appeal being A.P.O. No. 181 of 2016, an Hon'ble Division Bench of this Court directed the Land Acquisition Collector to undertake the exercise of determining the occupation charges of the premises in question for the period 20th January, 2000 to 15th December, 2013 within a stipulated time frame, pursuant to which occupation charges were re-determined by the authority upon taking into consideration all relevant

factors. The re-assessment was sent to the Land Reforms Commissioner and Principal Secretary to the Government of West Bengal, Land and Land Reforms Department (second respondent in the first writ petition) for vetting and authentication and upon such vetting the amount payable by the KMC to the Company was enhanced to Rs. 1, 62, 43, 175/-. Upon dismissal of a special leave petition filed by the Corporation by the Hon'ble Supreme Court against the order of the Hon'ble Division Bench, the KMC filed an objection before the Land Acquisition Collector on 13th June, 2022 requesting him to reconsider the determination of occupation charges payable by the KMC to the Company and refund any excess amount paid.

The determination of occupation charges / rent compensation vide memos dated 29th December, 2020, 29th June, 2021 and 9th August, 2021 is assailed in the writ petition. According to the KMC, the three properties which have been taken into consideration for determination of rent of the subject property are located in prime commercial areas whereas the subject premises is in a congested slum area. The purported vetting/scrutiny is contrary to the direction of the Hon'ble Division Bench. The right to challenge the Collector's assessment was preserved by the Hon'ble Division Bench which entrusted the task of computation of rent compensation upon the first LA collector who failed to act independently and borrowed the view of the Land Reforms Commissioner which was not contemplated in the order of the Hon'ble Division Bench. The Company is also aggrieved by the computation and has sought further enhancement of rent compensation. Since both the parties are aggrieved by the computation of the rent compensation, the issue needs to be

revisited by the authority. Upon realising the mistake in the decision making process, the first LA Collector issued a notice upon the parties for revisiting the matter upon inspection of the premises in question to determine the area of the vacant land as well as the structure and calculate occupation charges on the same.

The KMC has sought a direction upon the authority concerned to re-determine the rent compensation/occupation charges strictly in accordance with law upon a joint survey/measurement of the built up area of the premises. Learned counsel for the KMC has submitted that in the event of cancellation of the letter dated 19th July, 2022 by the first LA Collector accepting the grievances of the KMC as genuine, the writ petition is required to be adjudicated on merits upon exchange of affidavits. If the KMC succeeds in the writ petition, there may be a direction for redetermination of rent compensation. It has been admitted by the authority in the letter dated 19th July, 2022 that the actual rentable area of structure as well as vacant land area was not determined and there were errors in calculation of occupation charges which require revisiting of the calculation process. The measurement of the property has been shown to be 7031 sqft. without physical measurement of the same. The LA Collector ought to have followed the provision laid down under section 14A of the West Bengal Premises Requisition And Control (Temporary Provision) Act, 1947 for determination/enhancement of rent compensation.

The contention of the writ petitioner in the second writ petition who is the 4th respondent in the first writ petition is as follows:-

By an order passed by the Hon'ble Division Bench of this Court on January 28, 2020 the Land Acquisition Collector was directed to undertake exercise of determining the occupational charges of the premises in question for the period 20th January, 2000 to 15th December, 2013. By a letter issued by the first Land Acquisition Collector on 12th August, 2021, the KMC was found liable to pay Rs. 1,62,43,175/- in favour of the petitioner. The letter was accompanied by several documents including detailed calculation of occupation charges. The rates of rent of two other properties suggested by the Company, location of the other properties, Government orders dated 3rd August, 1993 and 29th April, 2013 were some of the factors taken into consideration during determination of rent. The petitioners (KMC) are precluded from invoking the jurisdiction of this Court under Article 226 of the Constitution of India to examine the method and manner of assessment computation which require production of evidence by the parties and are best left for determination by the fact finding authority.

The Land Acquisition Collector is not a *persona designata* since he merely holds an office of a particular character as opposed to a person asserting as a member of a class. The first Land Acquisition Collector made a detailed determination of the occupation charges and only the formula for computation was used to recalculate the figure. The determination of occupation charges which is a process of adjudication upon relevant material based on which an effective opinion is expressed, has been made by the first Land Acquisition Collector and it is only the calculation that was made on the basis of the formula. The Hon'ble Division Bench required the first Land

Acquisition Collector to undertake the entire process of determination in accordance with law which includes compliance with Government orders and vetting and authentication of the amount calculated, by the superior authority.

The letters dated 29th December, 2020 and 29th June, 2021 are internal communications enclosed with the final order and cannot be the basis of a right to seek relief against or question the final order.

By a letter issued on 19th July, 2022, the first Land Acquisition Collector has sought to hold a joint inspection of the subject premises to revisit the calculation of occupation charges, the said letter being challenged by the Company in the second writ petition. The first Land Acquisition Officer, by a letter issued on 12th August, 2021 directed the KMC to pay an amount of Rs. 1,62,43,175/- to the Company as occupation charges and upon issuance of such order, the Land Acquisition Collector has become functious officio and has no authority to revisit/ review his order. The letter dated 19th July, 2022 is also contrary to the decision of the Joint Secretary, Government of West Bengal who, by its letter dated 9th August, 2021, directed the first Land Acquisition Collector to take steps for directing the KMC to make payment of the sum of Rs. 88,11,735/- as occupation charges to the Company. The measurement of the property has been shown as 7031 sq.ft. in determination of occupation charges and in the notification issued under section 4 of the Land Acquisition Act, 1894 and therefore does not require re-measurement. The Company has been deprived of its legitimate dues for thirteen years and the challenge to the order of determination of occupation charges by the KMC is untenable and impermissible.

The West Bengal Premises Requisition and Control (temporary provision) Act, 1947 has no manner of application in determination of rent compensation in the present case since it has been settled by a judgment passed by this Hon'ble Court that the provision of the Land Acquisition Act, 1894 would apply till passing of the award and the provisions of The Right To Fair Compensation and Transparency In Land Acquisition, Rehabilitation and Resettlement Act, 2013 shall apply for assessing compensation. The judgment and order dated 28th January, 2020 passed by this Hon'ble Court also records that the Gazette notification for fresh acquisition under section 4(1) was made under the Land Acquisition Act, 1894.

The petitioners placed reliance on the authorities in Haryana State Industrial Development Corporation Limited v/s. Mawasi and Others reported in (2012) 7 Supreme Court Cases 200, West Bengal Housing Infrastructure Development Corporation v/s. M/s. Impression reported in (2016) 3 CHN 153, State Bank of India and Others v/s. S. N. Goyal reported in (2008) Supreme Court Cases 92, Shanti Sports Club and Another v/s. Union of India and Others reported in (2009) 15 Supreme Court Cases 705, Union of India and Another v/s. Kartick Chandra Mondal and Another reported in (2010) 2 Supreme Court Cases 422 in support of their contention.

Learned counsel for the State respondents has submitted that steps have been taken for recalculation of the rent compensation payable by the KMC.

I have considered the rival contention of the parties, material on record and law on the point.

In order to determine whether the petitioner in the second writ petition (Rameshwar Properties) is entitled to the revised rent compensation payable by the KMC, the ground of challenge to the said assessment by the KMC needs to be addressed.

The cases have a chequered history. Rameshwar Properties is admittedly the owner of the premises in question, being 42, Ripon Street, Kolkata. The premises was initially requisitioned under Rule 75A of the Defence of India Rules framed under section 2(5) of the Defence of India Act, 1939 and thereafter under section 3(1) of the Act of 1947. The petitioner filed a writ petition being W.P. No. 2057 of 1997 against the order of requisition and during pendency of the writ petition, the State Government published a notice under section 4 of the Land Acquisition Act, 1894 stating that the premises was required for public purpose. Since no award was declared in terms of section 11A of the Act of 1894, Rameshwar Properties moved a writ petition being 1605 of 2003 which was disposed of by this Court on 26th June, 2012 directing the State to deliver possession of the property in favour of Rameshwar Properties. The Court further directed the Land Acquisition Collector, Kolkata to determine and pay, if not already determined and paid, rent for the period the property was under requisition and occupation charge from January 20, 2000 till the date of delivery of possession. Without handing over possession of the premises in compliance with the order of the Court, the first Land Acquisition Collector, Kolkata issued a fresh notification under

section 4 of the Act of 1894 on December 23, 2013. The order dated June 26, 2012 was carried in appeal by the KMC and by an order passed on 25th March, 2015 in A.P.O. No. 230 of 2014, the Hon'ble Division Bench opined that provision of the new Act would apply to determination of compensation and till passing of award, provisions of the 1894 Act would apply. In view of fresh acquisition proceedings being initiated, the Court did not direct handing over possession of the property to the owner. In the said appeal, the then Learned Advocate General informed the Court that the amount payable as rent up to a day prior to declaration under section 4 under occupation charges from 20th January, 2000 to 22nd December, 2013 be determined by the Collector and paid within two months from date. The calculation made by the LA Collector was held to be inappropriate by an Hon'ble Division Bench of this Court in an order passed on January 28, 2020 in A.P.O. No. 181 of 2016. The Hon'ble Division Bench directed determination of occupation charges within a stipulated time frame. It shall be useful to reproduce the operative portion of the order.

“APO No. 181 of 2016 and GA No. 1872 of 2016 are allowed by directing the concerned LA Collector to undertake the exercise of determining the occupation charges at premises no. 42, Ripon Street, Kolkata for the period January 20, 2000 to December 15, 2013 in accordance with law and upon due notice to both the appellant herein and the Kolkata Municipal Corporation. Such exercise should be completed by the relevant Collector within a period of three months from date. In the event the appellant is found entitled to any further payment, such payment should be discharged by the Corporation

within a further period of three months therefrom, subject to the parties' rights to challenge the Collector's assessment in accordance with law."

Significantly, the Hon'ble Division Bench reserved the right of the parties to challenge the Collector's assessment in accordance with law. Special leave petition filed before the Hon'ble Supreme Court against the said order was dismissed with an observation that the special leave petition does not examine and reflect on the fresh computation of rent/damages and the right of the petitioner to challenge the same in accordance with law. Armed with the observation made by the Hon'ble Supreme Court as well as the Hon'ble Division Bench of this Court, the KMC has filed the present writ petition challenging the occupation charges decided by the first Land Acquisition Collector, Kolkata.

Occupation charges were initially assessed at Rs. 1,18,52,059/- by the first LA Collector and sent to the LRC and Principal Secretary to the Government of West Bengal by memo dated 29th December, 2020 for vetting and approval. The fresh calculation was made by the first LA Collector on the basis of formula provided by the LRC and occupation charges were determined at Rs. 1,62,43,175/- and sent for further vetting to the LRC vide memo dated 29th June, 2021. Upon due vetting and authentication being communicated to the first Land Acquisition Collector by the Deputy Secretary to the Government of West Bengal vide memo dated 9th August, 2021, the first LA Collector was requested to move the Corporation for payment of Rs. 88,11,735/- to Rameshwar Properties as occupation charges since an amount of Rs. 74,31,440/- out of the entire amount of Rs. 1,62,43,175 was already paid by

the KMC earlier. The order was communicated to the KMC vide memo dated 12th August, 2021. The earlier memos dated 29th December, 2020, 29th June, 2021 and 9th August, 2021 are inter-departmental communications which culminated in the final memo issued to the KMC on 12th August, 2021.

At this juncture, it shall be pertinent to refer to the authorities in *Union of India and Another (supra)* and *Shanti Sports Club and Another (supra)*. The authority in *Union of India and Another* deals with internal communications relied upon by the respondents therein. The Hon'ble Court observed that an order would be deemed to be a Government order as and when it is issued and publicised. Internal communications processing a matter cannot be said to be orders issued by the competent authority unless they are issued in accordance with law. The authority in *Shanti Sports Club and Another* records that a noting in the file is merely a noting simplicitor and nothing more and cannot be treated as the decision of the Government.

In the present case, memos dated 29th December, 2020, 29th June, 2021 and 9th August, 2021 being inter-departmental communications not published in accordance with law, cannot be a subject matter of challenge in the writ petition. Copies of the said memos were not forwarded to either party in the writ petitions. The challenge to the final order dated 12th August, 2021 can therefore be dealt with in the writ petition.

Learned counsel for the KMC has submitted that the LA Collector ought to have followed the provisions of section 14A of the West Bengal

Premises Requisition and Control (Temporary Provision) Act, 1947 for determination of rent compensation.

In the order passed on 25th March, 2015 in A.P.O. No. 230 of 2014, the Hon'ble Division Bench has in no uncertain terms held that the provision of the Act of 2013 would apply to the determination of compensation and till passing of award, provision of the 1894 Act would apply. The award in respect of the premises declared by the Land Acquisition Collector on 21st November, 2016 also demonstrates that the proceeding was drawn up under section 11 of the Act of 1894 read with section 24(1)(a) of the Act of 2013. Though the premises was initially requisitioned under the Act of 1947, subsequently notification under section 4 of the Act of 1894 was published on 28th January 2000 stating that the premises was required for public purposes. Therefore the provision of the Act of 1947 has no manner of application in the present cases.

It is submitted on behalf of the KMC that though the Hon'ble Division Bench directed the first LA Collector to undertake the exercise of determining the occupation charges, the LA Collector took the instructions/assistance of the Land And Land Reforms And Refugee Relief And Rehabilitation Department, which directly intervened in the assessment by tutoring the LA Collector. Since the LA Collector was directed to determine the occupation charges himself, such conduct of the LA Collector is in violation of the direction of the Hon'ble Division Bench.

It is a fact that the LA Collector was directed to undertake the exercise of determining the occupation charges in accordance with law and upon due

notice to both the KMC and Rameshwar Properties. Record reveals that the assessment was made by the first LA Collector upon hearing representatives of the KMC and Rameshwar Properties and upon taking into consideration all the relevant factors including Government orders and rents of at least three comparable premises vis-a-vis the premises in question. The mode and method of such assessment has been elaborately stated by the first LA Collector in the document annexed to the letter dated 29th December, 2020 issued to the LRC. The order also records that the KMC did not provide any rate of rent in support of its claim. Moreover, as pointed out by Rameshwar Properties, the Land Acquisition Collector is not a *persona designata*, which is restricted to the legislative field and does not apply to judicial orders. The Hon'ble Division Bench required the LA Collector to determine the occupation charges in accordance with law. The occupation charges were accordingly determined by the LA Collector and only the quantum was recalculated on the basis of a formula provided in the memo dated 19th February, 2021. The fresh calculation was also made by the first LA Collector on the basis of said memo, thereby enhancing the estimated amount from Rs. 1,18,52,039/- to 1,62,43,175/- . In dealing with the issue 'in accordance with law' as directed by the Hon'ble Division Bench, the first LA Collector considered the submission made on behalf of the parties, relevant Government orders, rates of rent of three comparable premises and sent the assessment made by him for vetting and authentication by his superior authority. The Hon'ble Division Bench has not restricted the Collector from getting the assessment vetted and authenticated by his superior authority and it is needless to state that such

vetting and authentication, as requested by the Collector is in accordance with the protocol of the department. Such act on the part of the Collector cannot be said to be in excess of or in violation of the direction of the Hon'ble Division Bench. The Collector being part of the administration and discharging his official duty in complying with the order of the Court, was well within the official discipline in referring the assessment made by him to his superior authority for vetting and approval.

The KMC has accepted the assessment made by the Collector to the tune of Rs. 1,18,52,059/- and has expressed reservation with regard to the reassessment made on the basis of the formula provided by the LRC.

The entire process of reassessment includes vetting and authentication of the assessment made by the Collector and significantly, the final assessment has also been made by the Collector in terms of the order of the Hon'ble Division Bench. A detailed calculation of the occupation charges has been made by the Collector and since the initial assessment made in terms of the order of the Hon'ble Division Bench has not been disputed by the KMC, there cannot be any dispute with regard to reassessment thereof by the same person, i.e., the Collector, moreso, since it has been made on the anvil of an elaborate consideration of all relevant factors and documents. The intention of the Hon'ble Division Bench could not have been to restrict the Collector to take an isolated decision to the exclusion of relevant parameters permissible in law. The decision making process cannot be called in question merely on the ground that the amount was recalculated on the basis of the formula provided

by the Department. Therefore the reassessment of occupation charges to the tune of Rs. 1,62,43,175/- cannot be discarded on that score.

The Collector, by a letter issued on 19th July, 2022, proposed a fresh inspection of premises no. 42 for determining the actual rentable area of structures as well as the vacant land and for correction of some errors in calculation of occupation charges. The notification issued under section 4 of the Land Acquisition Act, 1894 demonstrates that the plot in question comprises 7031 sq.ft. In the exercise undertaken for determination of occupation charges, the Collector has recorded the measurement of the premises to be 7031 sq.ft. In fact all the documents pertaining to the plot in question including the documents of acquisition demonstrate that the plot comprises 7031 sq.ft. So there cannot be any doubt or dilemma in respect of the area of the plot and undertaking further measurement shall be a futile exercise. Prior to issuance of the letter on 19th July, 2022, the said measurement has not been challenged by either party.

So far as error in the calculation of occupation charges is concerned, record reveals that occupation charges were assessed, reassessed and the KMC was requested by the Collector vide memo dated 12th August, 2021 to take necessary action in terms thereof. In other words, the decision taken by the Collector in compliance with the direction of the Hon'ble Division Bench was communicated to the KMC for taking necessary steps, which implies that the assessment proceeding was concluded by the Collector upon final order being passed and communicated. Upon issuance of the demand, the Collector has become functus officio and has no authority to revisit/review his own

order. Black's Law Dictionary (6th Edition page 673) referred to in the authority in State Bank of India and others (supra) defines *functus officio* as "Having fulfilled the function, discharged the office, or accomplished the purpose, and therefore of, no further force or authority". In the case in hand, since the authority has taken the final decision and communicated the same to the KMC for necessary action, it cannot review its own decision at a later stage. Also, the measurement of the property not being in dispute and the assessment having been made on an elaborate consideration of all relevant factors, there is hardly any scope for revisiting the issue by the Collector.

In the light of the discussion made hereinabove, it is held that the memo dated 12th August, 2021 does not suffer from any illegality/irregularity which calls for interference by this Court.

Accordingly, W.P.O. 2289 of 2022 is dismissed. W.P.O. 2380 of 2022 is allowed.

IA no. GA 2 of 2023 is also disposed of.

The letter issued by the first Land Acquisition Collector on 19th July, 2022 is set aside/quashed.

The KMC is directed to pay occupation charges in respect of the premises in question for the period January 20, 2000 to December 15, 2013 to Rameshwar Properties Private Limited, the petitioner in the second writ petition, to the tune of Rs. 88,11,735/- (Rs. 1,62,43,175/- – Rs. 74,31,440/- already paid), within two months from the date of judgment.

Before winding up, this Court records that since Rameshwar Properties has accepted the final assessment made by the first LA Collector and has not made any submission to substantiate its claim of minimum occupation charges to be at least Rs. 40 per sq.ft, the Court dissuades from making any comment thereon.

However, this observation shall not preclude the Company from claiming enhancement of occupation charges in future, if so advised.

There shall however be no order as to costs.

Since no affidavit is invited, the allegations contained in the writ petitions are deemed not to be admitted.

Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)