

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

The Hon'ble **JUSTICE SUVRA GHOSH**

W.P.A. 10142 of 2020

Ainuddin Sek

Vs.

State of West Bengal & Ors

With

W.P.A. 10143 of 2020

Kalpana Pal

Vs.

State of West Bengal & Ors

With

W.P.A. 10151 of 2020

Taimina Bibi

Vs.

State of West Bengal & Ors

For the Petitioners:	Mr. Rabindra Nath Mahato, Adv. Mr. A.S. Ray, Adv.,
For the Respondent No 5.:	Mr. Sayan Sinha, Adv. Mr. Mainak Swarnakar, Adv.,
For the State:	Mr. Soumitra Bandyopadhyay, Adv. Mr. Aniruddha Sen, Adv. [In W.P.A. 10142 of 2020] Mr. Susovan Sengupta, Adv. Mr. Manas Kr. Sadhu, Adv. [In W.P.A. 10143 of 2020] Mr. Chandi Charan De, Adv. Mr. Haripada Maity, Adv. Mr. Anirban Sarkar, Adv., [In W.P.A. 10151 of 2020]

Heard on: 14.09.2021

Date: 27.09.2021

SUVRA GHOSH, J. :-

1. As the three writ petitions pertain to a common grievance of the petitioners and also dispute regarding acquisition of the land in question, all the three writ petitions are being disposed of by a single judgment.

2. The grievance of the petitioners in the three writ petitions against the respondents is that though they have acquired right, title and interest in respect of land in plot no. 142 under Mouza – Ruisanda, J.L. No. 211, L.R. Khatian No. 223, R.S. Khatian No. 218, Police Station- Kharagpur, District :- West Medinipur, by virtue of registered deeds of sale and are in possession of such property, the respondents claim to have acquired the property comprising 0.70 acres. The respondents have neither awarded any compensation for the same to the petitioners, nor taken physical possession of the land in question.

3. It is submitted on behalf of the petitioners that one Lakshmikanta Manna who was the original owner of land in plot no. 142 under Mouza- Ruisanda, J.L. No. 211, L.R. Khatian No. 223, R.S. Khatian No. 218, Police Station- Kharagpur, District:- West Medinipur, sold out 0.09 acres of land in the said plot in favour of one Jiten Maity by virtue of registered deed and Jiten Maity in turn transferred the said land by virtue of a registered deed in favour of one Kartick Chandra Maity. Kartick Chandra Maity sold out the land to one Bijoy Kumar Sharma who in turn sold out the same to the petitioner in WPA 10142 of 2020.

4. Similarly, the petitioner in WPA 10143 of 2020 acquired right, title and interest in respect of 0.14 acres of land in plot no. 142 by virtue of purchase from Hrishikesh Dey and Dipak Kumar Dey who purchased the same from the erstwhile owner.
5. The petitioner in WPA 10151 of 2020 acquired right, title and interest in respect of 0.14 acres of land in plot no. 142 by virtue of purchase by registered deed from Hrishikesh Dey and Dipak Kumar Dey.
6. Pursuant to applications filed by the petitioners before the Block Land and Land Reforms Officer, Kharagpur-I praying for mutation of their names in respect of their purchased portions, the Revenue Officer intimated the petitioners vide notice dated January 10, 2011 under section 51/57 of the West Bengal Land Reforms Act, 1955 that 0.70 acres of land in plot no. 142 having been acquired, a local inspection would be held on January 18, 2011 in presence of the petitioners for determination and demarcation of the land. No such inspection was held on the relevant date and it was learnt that supplementary award amounting to Rs. 1,68,982/- was prepared relating to acquisition of land in plot no. 142 and was sent to the Land and Land Reforms Department for approval. No approval has yet been received.
7. It is further contended that it appears from the letter dated May 11, 2017 issued by the Collector, West Medinipur to the Principal Secretary of Government of West Bengal, Land and Land Reforms Department that even after lapse of more than five and a half years after the supplementary award was prepared, approval of the same has not been granted, nor any compensation awarded to the land owners. The petitioners are in actual

physical possession of the land in question and the authorities have neither paid any compensation to the petitioners, nor taken possession of the land and as such, in view of the provision laid down under section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the acquisition case is deemed to have lapsed. The petitioners approached the authorities by an application for declaring the acquisition proceedings as lapsed and for deleting the entry in the relevant record of rights in respect of 0.70 acres of land in plot no. 142 in the name of West Bengal Industrial Infrastructure Development Corporation Limited. The said applications were disposed of by the concerned authority in compliance with an order of this court in WP No. 7612 (W) of 2019, WP No. 7614 (W) of 2019 and WP No. 7613 (W) of 2019 passed on December 20, 2019. The applications were rejected by the authority with an observation that the petitioners being subsequent purchasers had no right to claim compensation under section 24(1) (a) of the Act of 2013, nor any right to challenge the acquisition proceedings drawn in accordance with the provision of the Act of 1894. The petitioners submit that as they have stepped into the shoes of their vendors they can very well maintain their right under section 24(2) of the Act of 2013. Being aggrieved by the order of the concerned authority dated February 4, 2020 rejecting the representations of the petitioners, the petitioners have filed the present writ petitions.

8. It is submitted by learned advocate for the petitioners that admittedly the petitioners purchased the land in question after publication of notification under section 4 as well as publication of declaration under section 6 of the

Act of 1894. Referring to page 32 of annexure to WPA 10142 of 2020, learned advocate submits that a supplementary award amounting to Rs. 1,68,982.00/- was prepared and sent to the Collector for approval, the same not being approved till date. Drawing the attention of this court to section 24 of the Act of 2013, learned counsel has submitted that as physical possession of the land has not been taken or compensation for the same has not been paid the proceeding shall be deemed to have lapsed. No fresh proceeding has also been initiated by the respondents.

9. Learned advocate has placed reliance upon a judgment in Indore Development Authority v/s. Manoharlal and others reported in (2020) 8 Supreme Court Cases 129. Referring to paragraph 246 of the report, learned advocate has submitted that execution of a panchnama is mandatory for taking over possession of the acquired land. No such panchnama is found to have been executed in the present case. Learned advocate has next referred to paragraph 264 of the judgment wherein it is observed that the possession of the acquired land would be taken only by way of a memorandum/panchnama. Learned advocate next takes the court to paragraph 143 which says that *“Lapsing is provided only where possession has not been taken nor compensation has been paid, divesting of vested land is not intended nor specifically provided.”* Learned advocate has placed reliance on paragraphs 252 and 253 which define the term “possession” and says that a person with title is considered to be in actual possession as presumption of possession is in favour of the owner of the property. Learned advocate has also referred to paragraphs 261, 262 and 263 of the judgment which deal

with mode of taking possession including drawing of panchnama. Learned counsel has also placed reliance upon the judgment of the Hon'ble Supreme Court in Shiv Kumar and another v/s. Union of India and others reported in (2019) 10 Supreme Court Cases 229 in support of his contention. Learned advocate has prayed for a writ in the nature of mandamus setting aside the order dated 4th February, 2020 passed by respondent no. 4 and commanding the respondent authorities to treat the Land Acquisition Case as lapsed proceeding and delete the entry in the relevant records of rights in the name of respondent no. 5.

10. The respondents no. 1-4 and respondent no. 5 have filed separate affidavits enclosing documents and have submitted that at the instance of respondent no. 5 acquisition proceeding was initiated by the concerned authority of the Government of West Bengal in respect of about 84.135 acres of land including an area of 70 decimals in plot no. 142. Notification under section 4 of the Land Acquisition Act, 1894 was published in the Kolkata Gazette on 27-11-2006 and declaration of intended acquisition under section 6 of the Act of 1894 was published in the Kolkata Gazette on 27th November, 2007 after wide circulation. The award was declared by the Collector in the Month of May, 2008. Subsequently it was informed by the then Block Land and Land Reforms Officer, Kharagpur-I vide memo no. 49/KGP/I dated 21-01-2011 that an area of 1.50 acres in plot no. 142 belonged to one Nalini Kanta Ghosh who sold out the same to one Lakshmikanta Manna by registered deed dated 12-11-1979. The said purchaser filed an appeal before the District Land and Land Reforms Officer, Paschim Medinipur and after thorough enquiry and

proceeding, the said officer approved benefit in favour of Lakshmikanta Manna as raiyat by divesting 1.50 acres from the ceiling of Nalini Kanta Ghosh. Meanwhile, Lakshmikanta Manna sold out the said plot to several persons from time to time out of whom one Manoranjan Pal filed a representation before the Land Reforms and Tenancy Tribunal which directed the Block Land and Land Reforms Officer (B.L. & L.R.O in short) to dispose of the representation in accordance with law. Such representation was disposed of by the then B.L. & L.R.O on 21-01-2011 with an observation that the present petitioners are some of the raiyats who are affected due to acquisition of the land. Accordingly a supplementary award amounting to Rs. 1,68,982/- was granted and such amount was vetted by the department of Land and Land Reforms and Refugee Relief and Rehabilitation on 03-04-2019. The said amount was received by the State respondent from respondent no. 5 on 24-06-2019 and is yet to be disbursed.

11. Admittedly the petitioners purchased the land after issuance of notification under section 4, publication of declaration under section 6 and after passing of the award, when the land was vested with the State. The award in the name of Lakshmikanta Manna has been deposited in the treasury which is sufficient compliance. Certificate of possession in Form-21 has also been executed in favour of respondent no. 5 who has mutated its name as raiyat in respect of the property in the concerned record of rights and has leased out the property to various industries for setting up Telcon & Allied Industrial Units at Kharagpur presently known as Vidyasagar Industrial Park.

12. Placing reliance on the judgment in Indore Development Authority (supra), learned counsel for the State respondents has submitted that once the land is vested in the State it cannot be divested and any alienation subsequent to notification under section 4(1) is void and confers no title on the basis of such alienation. Referring to paragraphs 246 and 247 of the judgment learned counsel has submitted that section 24(2) of the 2013 Act requires actual physical possession to be taken and mere drawing of a panchnama for taking over possession is not enough. After vesting of the land, any person retaining possession is a trespasser and has no legal right thereon. Acquisition of land by the State Government and drawing up a memorandum of taking possession amounts to taking physical possession of the land and physically occupying the land is not required. Also, the obligation to pay compensation is complete by tendering the amount under section 31(1) of the Act of 1894. The supplementary award in favour of the erstwhile owner Lakshmikanta Manna is lying with the State authorities and the petitioners can at best collect the said award as subsequent purchasers. The petitioners having acquired no right in respect of land qua the State are not entitled to challenge the acquisition proceedings which concluded prior to their acquiring title.

13. Learned advocate for the respondents has drawn the attention of the court to the fact that though the acquisition proceeding was concluded in 2008 and award declared in May, 2008, the present writ petitions have been filed only in 2020, i.e., after delay of about 12 years. Placing reliance on paragraphs 351 and 353 of the judgment in Indore Development Authority (supra), learned advocate has submitted that though the petitioners were aware of the

acquisition proceedings and award passed therein from the date of purchase of the land, they did not claim any remedy soon thereafter which tantamounts to waiver of their right and as such, the court cannot deal with the stale demands of the petitioners and the writ petitions should fail on the ground of delay and laches on the part of the petitioners.

14. I have considered the submissions made on behalf of the parties as well as material on record and the law on the point. It is not in dispute that the petitioners are subsequent purchasers who purchased the land after completion of the acquisition proceedings. Notification under section 4(1) of the Land Acquisition Act, 1894 was published in the Kolkata Gazette on 27-11-2006, declaration of intended acquisition under section 6 of the Act was published on 27th November, 2007 and award was declared by the Collector in May, 2008. Petitioner Ainuddin Sek purchased 0.09 acres of land in plot no. 142 on 15th December, 2008, petitioner Kalpana Pal purchased 0.14 acres of land in plot no. 142 on 6th March, 2009, and petitioner Taimina Bibi purchased 0.14 acres of land in the same plot on 6th March, 2009.

15. The Hon'ble Supreme Court has observed in *Shiv Kumar and Another v/s. Union of India and Others* reported in (2019) 10 Supreme Court Cases 229 that “*the law on the issue can be summarised to the effect that a person who purchases land subsequent to the issuance of a section 4 notification with respect to it, is not competent to challenge the validity of the acquisition proceedings on any ground whatsoever, for the reasons that the sale deed executed in his favour does not confer upon him, any title and at the most he can claim compensation on the basis of his vendor's title.*” The same

proposition of law is envisaged in V. Chandrasekaran and Another v/s. Administrative Officer and Others reported in (2012) 12 Supreme Court Cases 133 and Indore Development Authority (supra). The Hon'ble Supreme Court has observed that any alienation of land subsequent to notification under section 4(1) is void and such alienation does not bind the State or the beneficiary under the acquisition. A person purchasing land after such notice does so at his peril as he purchased property already vested with the State. Such person has no authority to challenge the validity of the acquisition proceedings on any ground whatsoever and can at best claim compensation on the basis of his vendor's title. The petitioners have in fact admitted that they have no right to challenge the validity of the proceedings but at the same time have claimed that the proceedings be declared to be lapsed in view of section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

16. The law laid down in section 24(2) of the Act of 2013 is set out:

“(2) Notwithstanding anything contained in sub section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land

acquisition afresh in accordance with the provisions of this Act.”

17. The petitioners claim that despite acquisition of the land and preparation of supplementary award, neither any compensation was paid, nor possession of the land taken by the State despite lapse of more than 5½ years. It is admitted by the State respondents in the affidavit used by them that the supplementary award has not been disbursed to the owners and the State is ready to disburse the same. The document annexed to the affidavit demonstrates that the supplementary award to the tune of Rs. 1,68,982/- has been sent by a demand draft dated 19-06-2019 by respondent no. 5 to respondent no. 2 for payment to the awardees and the amount is presently lying with the treasury at Midnapore. Though it has been submitted by learned advocate for the State respondent that the supplementary award was deposited with the treasury within the statutory period of time, the documents reveal that the supplementary award was sent to the Principal Secretary to the Government of West Bengal, Land & Land Reforms Department on 07-07-2011 and the same was vetted by the department of Land & Land Reforms and Refugee Relief and Rehabilitation on 03-04-2019. The said estimate was thereafter placed by respondent no. 5 before the State authorities and received by the latter on 24-06-2019. Therefore it is crystal clear from the recital in the documents relied upon by the respondents that the supplementary award was not tendered to the awardees within the stipulated period of time. In fact, Form-13 annexed to the affidavit used by the State respondents indicates that proportional supplementary award has

been allowed in favour of the petitioners and is yet to be disbursed. Therefore it can be concluded that compensation (supplementary award) has not been paid to the petitioners in terms of section 24(2) of the 2013 Act.

18. The other question for consideration is whether physical possession of the land was taken by the respondent in terms of section 24(2) of the Act of 2013. The Hon'ble Supreme Court, in the judgment of Indore Development Authority (supra) has dealt with the term "physical possession" in detail. The Hon'ble Court has made it clear that the two conditions specified in section 24(2) for lapse of proceedings are – (I) possession of the acquired land has not been taken and (II) compensation has not been paid. If possession is taken but compensation not paid there would be no lapse. Similarly, if compensation is paid and possession not taken, there would also be no lapse. The twin requirements are cumulative and conjunctive in nature. The proceedings initiated under the 1894 Act shall lapse only when possession of the acquired land has not been taken and compensation has not been paid. In dealing with the mode of taking possession under the 1894 Act, the Hon'ble Supreme Court has held that drawing of panchnama for taking over possession is not enough when the actual physical possession remains with the land owner. Section 24(2) of the 2013 Act requires taking of actual physical possession by the State. The land vests with the State with possession and any person retaining possession thereafter shall be treated as trespassers. The Hon'ble Apex Court has continued to say that when the State Government acquires land and draws up a memorandum of taking possession that amounts to taking physical possession of the land. The judgment records that possession

comprises control over the property and the will to exercise such control. What is important is a visible intention of possession. Once such possession is taken, it vests in the State free from all encumbrances. The Hon'ble Court has emphasised on taking of actual possession of the acquired land. No hard and fast rule constituting taking of possession has been laid down in the judgment. The Hon'ble Court has observed that "The legal fiction of lapsing under section 24(2) of the 2013 Act cannot be extended to denude title which has already vested in the beneficiaries of the acquisition corporation/local bodies, etc. and who, in turn, have also conveyed title and transferred the land to some other persons after development."

19. In the present case the award was originally declared in favour of the Collector on the basis of vesting report submitted by the then B.L. & L.R.O. and supplementary award was declared subsequently. A copy of certificate of possession of land in Form – 21 demonstrates that respondent no. 5 received possession of the land on 26-06-2008 from the Land Acquisition Department Paschim Medinipur for the purpose of setting up of Telcon & Allied Industrial Units in Kharagpur. Respondent no. 5 has filed record of rights to show that its name has been recorded as raiyat in respect of 0.70 acres of land in plot no. 142.
20. The record of rights produced by the petitioners also demonstrates possession of respondent no. 5 in respect of 0.70 acres of land in plot no. 142.
21. This respondent has leased out the said property to different industries and accordingly several industries have been set up in the said property. Therefore it can be inferred that physical possession of the acquired land has been

taken by the State and allotted to the requiring body (respondent no. 5) who has utilised the land. In other words, physical possession of the land has been taken in compliance with section 24(2) of the Act of 2013. As such, the proceedings cannot be said to have lapsed.

22. Last but not the least, it is pertinent to mention that though the petitioners had knowledge of the proceedings since their purchase of the property, they chose to remain dormant for sufficient period of time and filed the present writ petitions only in 2020. Learned counsel has taken the court to the judgment in Indore Development Authority (supra) where it has been held that “If a claimant is aware of the violation of his rights and does not claim his remedies, such inaction or conduct tantamounts to a waiver of the right. In such cases, the lapse of time and delay are most material and cannot be ignored by the Court”. No reasonable explanation being given by the petitioners for such inordinate delay, this court should not go into the stale demand of the petitioners after lapse of years.

23. In conclusion it is decided as hereunder:-

- (i) The petitioners being admittedly subsequent purchasers of the land in question have no authority to challenge the validity of the acquisition proceedings on any ground whatsoever and can at best claim compensation on the basis of their vendor's title.

- (ii) Physical possession of the acquired land has been taken by the State and allotted to the requiring body (respondent no. 5) who has utilised the land. Therefore title in respect of land which has already vested with the State and the beneficiaries of the acquisition cannot be denuded.
- (iii) The documents on record clearly demonstrate that the supplementary award was not tendered to the awardees within the statutory period of time and is still awaiting disbursal. Therefore one of the components of section 24(2) of the Act of 2013 has not been fulfilled.
- (iv) As physical possession of the land has been taken by the State and utilised by the beneficiaries to the acquisition in compliance with section 24(2) of the 2013 Act, the proceedings shall not be deemed to have lapsed.
- (v) Due to delay and laches on the part of the petitioners in claiming remedy such demand has become stale and has lost weight.

- (vi) The petitioners having stepped into the shoes of their vendor are at liberty to collect the compensation allotted in their favour by the Additional District Magistrate (Land Acquisition) on 07-02-2019 in L.A. Case No. 11 of 2007-2008.

24. With the above observation, W.P.A. 10142 of 2020, W.P.A. 10143 of 2020 and W.P.A. 10151 of 2020 are dismissed.

25. There shall however be no order as to costs.

26. 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)