

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

The Hon'ble **JUSTICE SUVRA GHOSH**

W.P.A. 15475 of 2021

**Sudhir Kumar Majumdar & Ors.
Vs.
State of West Bengal & Ors.**

With

W.P.A. 15646 of 2021

**Sk. Abdul Gaffar
Vs.
State of West Bengal & Ors.**

With

W.P.A. 15649 of 2021

**Bijay Sain
Vs.
State of West Bengal & Ors.**

With

W.P.A. 15766 of 2021

**Alamgir Mallick
Vs.
State of West Bengal & Ors.**

With

W.P.A. 15794 of 2021

**Rekha Rani Roy & Ors.
Vs.
State of West Bengal & Ors.**

With

W.P.A. 15713 of 2021

**Bishwanath Mondal & Ors.
Vs.
State of West Bengal & Ors.**

With

W.P.A. 15717 of 2021

**Marhabuddin Mondal & Anr.
Vs.
State of West Bengal & Ors.**

For the Petitioner:

Mr. Uttiya Roy, Adv.,
Mr. Arnab Mandal, Adv.

For the Respondent Nos. 5 & 6:

Mr. Falguni Majhi, Adv.

For the Respondent No. 3:

Mr. Subrata Bhattacharya, Adv.,
Mr. Subhash Ray, Adv.
(In WPA 15766 of 2021)
(In WPA 15794 of 2021)
(In WPA 15713 of 2021)
(In WPA 15717 of 2021)

For the NHAI:

Ms. Manika Roy, Adv.

For the State:

Mr. A.Roy, Ld. G.P.,
Md. T.M. Siddiqui, Adv.,
Mr. N. Chatterjee, Adv.

Mr. Ansar Mondal, Adv.,
Mr. Ayan Banerjee, Adv.
(In WPA 15646 of 2021)

Mr. Chandi Charan De, Adv.,
 (In WPA 15649 of 2021)
 (In WPA 15717 of 2021)
 Mr. Haripada Maity, Adv.
 (In WPA 15649 of 2021)
 Mr. Anirban Sarkar, Adv.
 (In WPA 15794 of 2021)
 Mr. Soumitra Bandyopadhyay, Adv.,
 Mr. Subhasis Bandyopadhyay, Adv.
 (In WPA 15713 of 2021)
 Ms. Chandana Ghosh, Adv.
 (In WPA 15717 of 2021)

Hearing Concluded on: 09.09.2022

Date: 30.09.2022

SUVRA GHOSH, J. :-

1. Since similar issues are involved in all the writ petitions, they are taken up for consideration and disposal by a common judgment.

2. The prayers of the petitioners are as hereunder:-

“a) a writ in the nature of mandamus directed the respondent authorities to consider the representation dated 31.03.2021, in accordance with law and in the light of the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013;

c) a writ in the nature of mandamus directing the respondent authorities to release the petitioners’ portions of plot no. 82, from the clutches of acquisition and free from any other encumbrances incidental to the aforesaid LA Case No. 2(IV)/2004-2005, or in the alternative, to acquire the same afresh, if so required, but only upon compliance of the due process of

law and upon payment of appropriate damage compensation as per the current market rate and in accordance with the present law of the land;”

3. The petitioners in W.P.A. 15475 of 2021 claim to be recorded owners of property in R.S. and L.R. plot no. 82 under L.R. khatian nos. 294, 295, 293 and 296 in mouza- Alisha, J.L. no. 77, P.S. Burdwan Sadar, Dist:- Purba Bardhaman comprising about 0.050 acres since 1988 by virtue of purchase and have been running small scale business therein for earning their livelihood.
4. The petitioner in W.P.A. 15646 of 2021 claims to be recorded owners of property in R.S. and L.R. plot no. 82 under L.R. khatian no. 456 in mouza- Alisha, J.L. no. 77, P.S. Burdwan Sadar, Dist:- Purba Bardhaman comprising about 0.081 acres since 1986 by virtue of purchase and has been carrying on small scale business therein.
5. The petitioner in W.P.A. 15649 of 2021 claims to be recorded owners of property in R.S. and L.R. plot no. 82 under L.R. khatian no. 292 in mouza- Alisha, J.L. no. 77, P.S. Burdwan Sadar, Dist:- Purba Bardhaman comprising about 0.034 acres since 1994 by virtue of purchase and have been running small scale business therein.
6. The petitioner in W.P.A. 15766 of 2021 claims to be recorded owners of property in R.S. and L.R. plot no. 82 under L.R. khatian no. 66 in mouza- Alisha, J.L. no. 77, P.S. Burdwan Sadar, Dist:- Purba Bardhaman comprising about 0.036 acres since 1987 by virtue of purchase and have been running small scale business therein.

7. The petitioners in W.P.A. 15794 of 2021 claim to be recorded owners of property in R.S. and L.R. plot no. 82 under L.R. khatian no. 66 in mouza- Alisha, J.L. no. 77, P.S. Burdwan Sadar, Dist:- Purba Bardhaman comprising about 0.10 acres by virtue of purchase in 1985 and a deed of gift executed in 2019 and have been running small scale business therein.
8. The petitioners in W.P.A. 15713 of 2021 claim to be recorded owners of property in R.S. and L.R. plot no. 82 under L.R. khatian nos. 249, 250, 251 and 252 in mouza- Alisha, J.L. no. 77, P.S. Burdwan Sadar, Dist:- Purba Bardhaman comprising about 0.016 acres since 1985-1987 by virtue of purchase and have been running small scale business therein.
9. The petitioners in W.P.A. 15717 of 2021 claim to be recorded owners of property in R.S. and L.R. plot no. 82 under L.R. khatian nos. 340 and 341 in mouza- Alisha, J.L. no. 77, P.S. Burdwan Sadar, Dist:- Purba Bardhaman comprising about 0.1 acres since 1985-1986 by virtue of purchase and have been running small scale business therein.
10. Land acquisition proceeding was initiated under Act I of 1894 in respect of plot no. 82 for the purpose of development of Commercial Complex. Declaration under section 6 of the Act was published on 18th February, 2005 vide Burdwan No. 18-LA/2/IV/2/2005 dated 15th February, 2005 and award was declared on 13th March, 2007 in favour of Laxman Ghosh, Bamapada Ghosh and Bharat Chandra Ghosh despite the petitioners having purchased portions of the plot much prior to initiation of the acquisition proceedings. The petitioners are in continuous uninterrupted

physical possession of the plot and no notice was issued to them under the 1894 Act, nor was any award made in their favour. The proposed scheme of the Government was never executed and the LA Case suffers from gross non compliance of the provisions of sections 5A, 9, 16, 31 and 34 of the 1894 Act and also, the alleged award is hit by section 11A of the Act. The petitioners complain that since the entire acquisition proceeding has lapsed and in the meantime The Right to Fair Compensation And Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has come into effect the petitioners are entitled to compensation under the provisions of the said Act. Neither physical possession of the land was taken by the State respondents, nor compensation paid/deposited in favour of the petitioners for the same.

11. Very recently, the National Highways Authority of India issued notification under section 3A of the National Highways Act, 1956 proposing to acquire portions of the said plot no. 82 for widening of the National Highway-19 and published a notification in the local vernacular newspaper 'Bartaman' on 20th September, 2020. Pursuant to initiation of fresh acquisition proceeding vide LA case no. 18 (NH-19)/2020-2021, notice under section 3C (2) of the National Highways Act, 1956 was served upon the petitioners. Objections tendered by the petitioners against such proposed acquisition were turned down by an order passed on 21st December, 2020 upon hearing the petitioners. Subsequently, plot no. 82 was omitted in the declaration under section 3D of the National Highways Act, 1956 dated

16th February, 2021. The petitioners were informed that the said plot was acquired vide LA case no. 2(IV)/2004-2005.

12. It is submitted by learned counsel for the petitioners that since the acquisition under the Act of 1894 is hit by section 11A of the Act and also since there is no previous approval of the Government for declaration of the alleged award exceeding Rs. five lakhs as required under the law, no valid award can be said to have been passed and the acquisition proceeding stood lapsed. The proceeding is also hit by section 24 of the Act of 2013 since notice under section 12(2) of the 1894 Act was not served upon majority of the land owners and there was no tender of payment of compensation in terms of section 31 of the Act of the 1894. The authorities neither took possession of the plot in question, nor paid compensation for the same to the petitioners for which the petitioners are entitled to compensation in terms of the 2013 Act.
13. Learned counsel has further submitted that the petitioners were permitted to raise construction in the plot in question by the Pradhan of Baikanthapur- II, Grampanchayat and the plot was converted from sali by a letter issued by the Collector under section 4C of the West Bengal Land Reforms Act, 1955. The communications made to the petitioners by the Panchayat authority demonstrate that the petitioners have been carrying on business in the said plot all throughout. Referring to the certificate of possession submitted by the State respondents, it is submitted on behalf of the petitioners that this document cannot be construed to demonstrate delivery of possession of the property. No notice of hearing on the

objections filed under section 5A (1) of the Act of 1894 was served upon the petitioners as also the notice under section 9(3) and 9(4) of the Act. No panchnama was executed for the purpose of taking possession of the plot and the petitioners are still in possession of the same. Notification under section 3D of the National Highways Act, 1956 also does not cover the plot of the petitioners.

14. The document of publication of award produced by the State respondents pertain to draft award signed on 9th March, 2007. No notice under section 12(2) of the 1894 Act was issued to the petitioners by the authority.
15. During pendency of the writ petition the State respondents mutated the name of Burdwan Development Authority in the record of rights by exercising their administrative powers and the same has been challenged by the petitioners before the appropriate forum. The National Highways Authority has issued notice under section 26(2) of the Control of National Highways (Land and Traffic) Act, 2002 after filing of the writ petition and the petitioners are under constant threat of dispossession at the instance of the National Highways Authority.
16. Learned counsel for the petitioners has placed reliance on the following authorities:-
 - (i) State of Bihar And Others v/s. Kalyanpur Cement Limited reported in (2010) 3 Supreme Court Cases 274,

(ii) Smt. Bela Das v/s. Union of India & Ors. reported in W.P. 16237(W) of 2017 passed by a Coordinate Bench of this Court,

(iii) Raghbir Singh Sehrawat v/s. State of Haryana And Others reported in (2012) 1 Supreme Court Cases 792,

(iv) Ferro Alloys Corpn. Ltd. v/s. Union of India reported in AIR 1999 Supreme Court 1236,

(v) K. Lubna And Others v/s. Beevi And Others reported in (2020) 2 Supreme Court Cases 524,

(vi) State of West Bengal & Ors. v/s. M/s. Asiatic Investment Limited & Ors. reported in 2009 (2) CLJ (Cal) 637,

(vii) Prahlad Singh And Others v/s. Union of India And Others reported in (2011) 5 Supreme Court Cases 386,

(viii) Land Acquisition Officer v/s. A. Ramachandra Reddy And Others reported in (2011) 2 Supreme Court Cases 447,

(ix) Raghunath And Others v/s. State of Maharashtra and Others reported in AIR 1988 SC 1615; and West Bengal Land Acquisition Manual, 1991.

17. Learned counsel for the State respondents submits that no prayer for cancellation of acquisition was made before the State respondents and the grievance of the petitioners was appropriately dealt with by a reasoned order passed by the Special Land Acquisition Officer on 11th February, 2020.

18. Notification under section 4 of the Land Acquisition Act, 1894 was published on 7th July, 2004 and substance of notification under section 4(1) of the Act was issued in Form-3D. Upon disposal of objections under section 5A(1) of the Act declaration under section 6 of the Act was published on 18th February, 2005 and substance of the declaration under section 6 was published in Form-B on 14th March, 2005. Award was declared on 13th March, 2007 and possession of the acquired land was handed over to the requiring body being the Burdwan Development Authority on 2nd April, 2007. Notice under 9(3) and 9(4) of the Act was served upon the petitioners and other interested parties and adequate opportunity of hearing was granted to them. The LA case being no. 2(IV)/2004-2005 is complete in every respect and the writ petition is not maintainable.

19. Learned counsel has placed reliance on the following authorities:-

- i. Sharda Devi v/s. State of Bihar And Another reported in (2003) 3 Supreme Court Cases 128;
- ii. Ramniklal N.Bhutta And Another v/s. State of Maharashtra And Others reported in (1997) 1 Supreme Court Cases 134;
- iii. Indore Development Authority v/s. Manoharlal And Others reported in (2020) 8 Supreme Court Cases 129 in support of his contention.

20. It is submitted on behalf of the Burdwan Development Authority that the land has been recorded in the name of the authority in the L.R. record of

rights and the said authority being the requiring body is in possession of the land.

21. The National Highways Authority of India has submitted that the writ petitioners are not the owners of the plot in question which has already been acquired, and are therefore not entitled to any compensation. Initially the proposal for acquisition of an area of 0.183 acres in plot no. 82 was submitted by the National Highways Authority of India (in short the NHAI) before the second respondent for six laning project of Panagarh-Palsit section of NH-19. The said proposal was published under section 3A notification of the National Highways Act, 1956 on 26th June , 2020 but the same was dropped by the competent authority during publication of section 3D notification as it was found that the land was Government land owned by Burdwan Development Authority under the Government of West Bengal and did not belong to the petitioners. The name of Burdwan Development Authority has been recorded in the record of rights and it is State Government land which has been transferred to the Central Government/NHAI. For the said reason the writ petitioner is not entitled to get any compensation in respect of the plot in question which is vested land. The notification under section 3D of the 1956 Act has also not been challenged by the writ petitioners.

22. The National Highways Authority of India has referred to the order of a Coordinate Bench of this Court passed on 23rd December, 2015 in W.P. 30214 (W) of 2015 and order passed on 24th November, 2017 in W.P. No. 18322 (W) of 2017.

23. I have considered the submission made on behalf of the parties, material on record and the law on the subject.
24. The Hon'ble Supreme Court, in the authority in (1997) 1 Supreme Court Cases 134, has emphasized that the Courts should keep the larger public interest in mind while exercising their power of granting stay/injunction and the power under Article 226 being discretionary, will be exercised only in furtherance of interest of justice and not merely on the making out of a legal point. In the matter of land acquisition for public purposes, the interest of justice and public interest coalesce.
25. The petitioners purchased a portion of the plot in question being plot no. 82 and mutated their names in the relevant record of rights. In addition to the certificate of mutation, record of rights, dakhilas, permission of the panchayat to raise construction in the plot and a letter issued by the Additional District Magistrate (G), Burdwan to the District Land & Land Reforms Officer, Burdwan on 23rd November, 1995 also confirm the said mutation and approval of the proposed industrial unit in the plot. The said letter also demonstrates that the land did not fall within the proposed acquired land for housing complex as on that date.
26. Record reveals that notification under section 4 of the Land Acquisition Act, 1894 was published on 7th July, 2004 and declaration under section 6 of the Act was published in the Calcutta Gazette on 18th February, 2005. Substance of declaration under section 6 of the Act was published in Form

5B on 14th March, 2005. Award was declared on 13th March, 2007 in favour of the vendors of the petitioners.

27. It is envisaged in section 11A of the Act of 1894 that the award should be made within a period of two years from the date of publication of the declaration and the period of two years shall be computed from the last of the publication dates. Since public notice of the substance of declaration under section 6 in Form 5B was made on 14th March, 2005, the award declared on 13th March, 2007 is within the statutory period of time and is not hit by section 11A of the Act.
28. Strangely, the award was declared in favour of the vendors of the petitioners though the petitioners acquired title and possession in respect of the property much prior to issuance of the notification under section 4 of the Act or declaration of award. There is no document on record which suggests that notice under section 9(3) and 9(4) of the 1894 Act was served on the petitioners who were owners and occupiers of the plot at the relevant time. Even after declaration of award notice under section 12(2) of the Act was not served on the petitioners as appears from the record. As a consequence no compensation was also paid to the petitioners.
29. Learned counsel for the State respondents has submitted that it is open to the petitioners to take recourse of section 30 of the Act of 1894 which says that in case of any dispute as to the apportionment of the amount of compensation or as to the persons to whom it is payable, the Collector may refer the same to the decision of the Court.

30. In the present case, since the petitioners were not served notice of the award and had no knowledge about the same until their possession was hindered at the behest of the authorities, they were not in a position to take recourse to section 30 of the Act of 1894. Such an award made without apportionment has been held to be invalid by an Hon'ble Division Bench of this Court in the authority in State of West Bengal and Others v/s. M/s. Asiatic Investment Limited and Others reported in 2009 (2) CLJ (Cal) 636.
31. Clause 95(1) of the West Bengal Land Acquisition Manual, 1991 envisages that all awards exceeding Rs. five lakhs in each land acquisition case requires previous approval of the Government in the Land and Land Reforms Department. No such approval appears to have been taken by the acquiring body prior to declaration of award.
32. Referring to section 24(2) of The Right to Fair Compensation And Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, learned counsel for the petitioners has submitted that since no compensation was paid to the petitioners and physical possession of land has not been taken by the authority, the proceeding shall be deemed to have lapsed and the State respondent should either initiate fresh acquisition proceeding under the Act of 2013 and pay compensation to them accordingly or release the land in favour of the petitioners.
33. The law laid down in section 24(2) of the 2013 Act is set out:-

24(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:”*

34. That compensation was not paid to the petitioners and no notice under section 9(3) and 9(4) and /or section 12(2) of the 1894 Act was served on the petitioners have been discussed earlier. Section 31 (1) of the 1894 Act mandates tender of payment of compensation to the persons entitled thereto or depositing the same in accordance with law. True, taking possession is not dependent upon payment of compensation and once possession is taken under sections 16 or 17 of the 1894 Act, the land vests absolutely with the State and there is no divesting upon non payment of compensation. In such circumstances, compensation shall carry interest @ 9% or 15% in terms of section 34 of the 1894 Act. The documents relied upon by the State respondents in this regard do not demonstrate payment or tender of compensation to the awardees. Therefore one of the conditions laid down in section 24(2) of the 2013 Act has not been fulfilled by the acquiring body.

35. With regard to whether physical possession of the land was taken by the State respondents in terms of section 24(2) of the 2013 Act, the only

document relied upon by the State respondents is the certificate of possession executed on behalf of the State respondents in favour of the Burdwan Development Authority, being the requiring body, on 2nd April, 2007. During pendency of the writ petition the name of the requiring body has been recorded in the LR record of rights on an application filed by the Burdwan Development Authority on 2nd September, 2021 the said order being challenged by the petitioners. Though the State respondents claim to have handed over physical possession of the plot in question in favour of the Burdwan Development Authority, the live data downloaded by the petitioners indicates that their names are recorded as raiyats as in the month of August, 2021. Tax paid by the petitioners was accepted by the authority even in 2021 and classification of the property was converted from sali in 2010. Trade registration certificate was issued in favour of the petitioners by the panchayat in respect of the plot in question even in 2020 and 2021.

36. The Hon'ble Supreme Court, in the authority in Indore Development Authority (supra) has dealt with the term "physical possession" in detail. In the said judgment it is made clear that two conditions specified in section 24(2) for lapsed 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. Proceedings initiated under the 1894 Act shall lapse only when possession

of the acquired land has not been taken and compensation has also 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 which may be a mode of taking possession is not enough when actual physical possession remains with the land owner. Once possession is taken under section 16 and 17 of the 1894 Act, the land is vested with the State and drawing of panchnama for taking possession is sufficient. Upon the land being vested with the State and drawing up a memorandum of taking possession by the State, physical possession is deemed to be taken by the State. The Hon'ble Supreme Court has continued to say that possession comprises control over the property and the will to exercise such control. What is important is the visible intention of possession. Once such possession is taken, it vests with the State free from all encumbrances. The judgment records that in case of acquisition of large tract of land it may not be possible for the acquiring authority to take physical possession of each and every parcel of the land and it will be sufficient if symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document. Also, the provision of the 2013 Act cannot be extended to denude title which has already vested in the beneficiaries of the acquisition.

37. In the case in hand, there is not an iota of evidence to show that possession of the land was taken by the Collector under section 16 of the 1894 Act. No memorandum of possession as indicated by the Hon'ble Supreme Court was drawn up in presence of witnesses and the certificate

of possession is bereft of either signatures or presence of witnesses. The documents on record unambiguously demonstrate that the petitioners are in physical possession of the plot in question all throughout until the name of Burdwan Development Authority has been recorded during pendency of the writ petition, the same being under challenge.

38. As laid down in section 16 of the Act of 1894, vesting of the acquired land takes place as soon as possession is taken by the Collector after passing an award under section 11. Section 16 presupposes actual taking of possession and till that is done, legal presumption of vesting enshrined in section 16 cannot be raised in favour of the acquiring authority. [Prahlad Singh and Others (supra)]. In the authority in Raghvir Singh Sehrawat (supra), the Hon'ble Supreme Court has held that there being no evidence to show that actual possession of the land had been taken after giving notice to the appellant or that he was present at the site when possession was delivered to the requiring body, the documents showing delivery of possession which are self-serving documents cannot be made the basis for recording a finding that possession of the acquired land was taken. The ratio decidendi of both the cases is similar to the case in hand wherein there is no document to show taking of physical possession by the acquiring body. The legality and the validity of the documents of possession relied upon by the petitioners are also not under challenge. Had possession been taken under section 16 of the Act of 1894, the proceeding could not be said to have lapsed for non payment of compensation. Once the land vests, it cannot be divested even if there is some irregularity in the

acquisition proceedings. Lapsing is provided only when possession has not been taken, nor compensation paid [Indore Development Authority (supra)]. Herein, since possession of the plot in question has not been taken by the acquiring body, the question of vesting of the plot does not arise and absolute title and possession cannot be said to be conferred upon the State. The twin requirements of section 24 (2) of the Act of 2013 not being satisfied, the proceeding is deemed to have lapsed.

39. It is submitted on behalf of the National Highways Authority of India that since the plot in question is vested land the petitioners are not entitled to any compensation. The contention of the National Highways Authority has not been accepted by this Court as discussed earlier. Record reveals notification under section 3A (1) of the National Highways Act, 1956 was published on 26th June, 2020 for acquisition of the plot in question. Objections submitted by the petitioners were considered and rejected in proceedings under section 3C (2) of the Act of 1956 as the land was required for greater interest of the public and reasonable compensation in terms of the Act would be given to the land loser. Surprisingly, the plot of the petitioners was excluded in the declaration issued by the authority under section 3D (1) of the Act without assigning any reason for the same. The plea taken by the authority before this Court to justify the said act does not hold water. The National Highways Authority has gone a step further to issue notice under section 26(2) of the Control of National Highways (Land and Traffic) Act, 2002 to the petitioners directing them to remove unauthorised occupation in the plot in question. The petitioners

have filed objection to the said notice before the concerned authority which is pending.

40. It is trite law that when fresh notification is issued in respect of a plot followed by final declaration without withdrawing the earlier notification, the authority can be construed to have abandoned the earlier notification by issuing subsequent notifications. The earlier notification becomes redundant upon issuance of the subsequent notification, the subsequent notification having deemed to have superseded the earlier one. [Raghunath and Others (supra) and Land Acquisition Officer-cum-RDO (supra)].
41. In view of the above, it can be concluded that the subsequent notification issued by the National Highways Authority of India is in supersession of the earlier notification issued by the State authorities and in view of rejection of the objections filed by the petitioners to the said notification, the petitioners' plot ought to have been included in the declaration under section 3D (1) of the 1956 Act.
42. The order passed in W.P. 30214 (W) of 2015 on 23rd December, 2015 relied upon by the National Highways Authority was revisited by an order passed on 12th February, 2018 in W.P. 16237 (W) of 2017, both by Coordinate Benches of this Court and the Learned Judge, in the later order, observed that the petitioner's possession in the land in question could not be interfered with since an arbitral award was passed without hearing the petitioner even before the reference was made by the petitioner. The other judgment passed in W.P. No. 18322 (W) of 2017 deals with determination

of compensation payable to the petitioners and the manner in which the arbitration process was carried out. Section 3D and 3E of the Act of 1956 were also dealt with in the said order. The ratio of these orders can be distinguished from the facts and circumstances of the present case and the said orders do not come to the aid of the National Highways Authority herein.

43. Since proceeding under section 3A (1) of the Act of 1956 has been initiated by the National Highways Authority in respect of the plot in question amongst other plots, the said proceeding should be taken to its logical conclusion by the authority in accordance with law, moreso, as the earlier proceeding under the Act of 1894 has lapsed or in the alternative, has been abandoned. Also, the application of the petitioners submitted before the Land Acquisition Collector, Purba Burdwan on 31st March, 2021 ought to be considered in the light of the observation made in this judgment upon affording reasonable opportunity of hearing to all the interested persons including the petitioners.

44. In view of the above, the writ petitions are allowed in terms of prayers (a) and (c) thereto.

45. The respondents are restrained from giving effect to the notice issued by the National Highways Authority of India on 12th January, 2022 in so far as the petitioners are concerned and from disturbing the peaceful possession of the petitioners in respect of the plot in question till disposal of the representation submitted by them.

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

47. 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)