

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

The Hon'ble **JUSTICE SUVRA GHOSH**

W.P. No. 31112 (W) of 2014

**Usman Ghani
Vs.
The State of West Bengal & Ors.**

With

W.P. No. 31113 (W) of 2014

**Hazi Jan Mohammed
Vs.
The State of West Bengal & Ors.**

For the Petitioner: Mr. Amit kumar Pan, Adv.
Mrs. Tanusree Santra, Adv.,

For the State: Mr. Chandi Charan De, Adv.
Mr. Anirban Sarkar, Adv.,

Hearing Concluded on: 05.04.2022

Date: 21.04.2022

SUVRA GHOSH, J. :-

1. Since both the writ petitions pertain to identical issues, they are dealt with and disposed of by a common judgment.
2. It is contended on behalf of the petitioner in W.P. 31112 (W) of 2014 that the petitioner is the recorded owner of the land in plot no. 946, Mouza Krishnapur, J.L. no. 74, District Murshidabad measuring an area of about 0.19 acres. For the purpose of construction of 33KV sub-station of West

Bengal Electricity Board, the second respondent initiated proceedings under the West Bengal Land (Requisition and Acquisition) Act, 1948 and took possession of the land under requisition by serving notice under section 3(1) of the Act of 1948.

3. The petitioner in W.P. 31113 (W) of 2014 acquired title in respect of plot no. 48 measuring about 1.28 acres in J.L. no. 77, Mouza Fulpur, District Murshidabad by virtue of registered deed of sale dated 10th September 1974. The second respondent initiated proceedings under the West Bengal Land (Requisition and Acquisition) Act, 1948, for the purpose of maintaining supplies and service for rehabilitation of erosion-affected persons in Mouza Fulpur and took possession of the land on 18th May, 1987 under requisition by serving notice under section 3(1) of the Act of 1948.
4. No notification under section 4(1a) of the Act of 1948 was published in the official gazette during the life time of the said Act and the land was never acquired under the said Act. No compensation was granted to the petitioners under the Act of 1948 or 1894 in spite of the fact that the respondents are in possession of the plot. The petitioners have claimed compensation in terms of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 upon initiation of proceedings for acquisition of the land in terms of the said Act.
5. Learned counsel for the petitioners has placed reliance on the authorities in State of West Bengal v/s. Sabita Mondal with State of West Bengal v/s. Sabitri Devi (since deceased) with State of West Bengal v/s. Nur Islam with Samir Kumar Das v/s. State of West Bengal reported in 2011 (3) CHN (Cal)

555 and Smt. Mandodori Bhakat v/s. State of West Bengal and others with Sri Kali Charan Bhakat v/s. The State of West Bengal and Others with Sri Sanjit Bhakat v/s. The State of West Bengal and Others reported in (2013) 1 WBLR (Cal) 236 in support of his contention.

6. Referring to the affidavit-in-opposition filed by the State respondents in W.P. 31112 (W) of 2014, learned counsel for the State respondents has submitted that Moulabi Osman Gani purchased 1/3rd share in plot No. 946 out of the total area of 0.59 acres. Notice under section 3(1) of the Act of 1948 was issued much prior to 1st April, 1994 and possession of the land was handed over to the requiring body on 21st July, 1978. Award was declared on 23rd February, 1984 and the petitioners received 80% of the said award by cheque. In view of the West Bengal Acquisition Laws (Amendment and Validation) Act, 2011 published in the Kolkata Gazette, extraordinary on 29th May, 2012, the second proviso to sub section 3(B) of section 9 of the Principal Act was incorporated. In terms of the said provision notice issued and published under section 4(1a) of the Act of 1948 was deemed to be valid and question of initiation of fresh proceedings under the Act of 2013 does not arise. The petitioner is not entitled to any compensation under the Act of 2013.

7. The affidavit-in opposition filed by the State respondents in W.P. 31113 (W) of 2014 demonstrates as hereunder:-

Jan Mohammad Sk. purchased 2 annas share in plot no. 48 of Mouza Fulpur classified as pukur comprising a total area of 9.56 acres out of which 5.16 acres was acquired except the north-east and middle portion of the

plot. Notice under section 4(1) of the Act of 1948 was issued on 14th June, 1996 and possession of the land was handed over to the requiring body on 18th May, 1987. 80% of the award was declared under section 8B (1) of the Act of 1948 and Jan Mohammad Sk. received the said amount vide cheques on 8th March, 1990 and also signed an agreement to that effect. The case was switched over under section 9(3A) of the Principal Act of 1894 and revised estimates was sent to the Secretary, Relief and Welfare Department (Disaster Management), Government of West Bengal on 7th June, 2012. Residual payment could not be made due to non-placement of fund by the requiring body. As such, the writ petition ought to be dismissed.

8. It is not in dispute that the plot of land belonging to the petitioners was requisitioned by the State respondents by a notice under section 3(1) of the West Bengal Land (Requisition and Acquisition) Act, 1948 and possession of the plot was taken on 21st July, 1978 and 18th May, 1987 respectively. Record reveals that 80% of the estimated compensation was paid to the petitioner in W.P. 31112 (W) of 2014 on 12th February, 1982 and 29th February, 1984 and to the petitioner in W.P. 31113 (W) of 2014 on 8th March, 1990 under section 8B of the Act of 1948.
9. By way of insertion of section 7A in the Act of 1948 by the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1996, the Collector was authorised to make an award under section 7(2) within a period of three years from the date of publication of the notice in the official gazette under section 4(1a) and if such award was not made within the said period, the notice would lapse. It was provided that where the notice was published

more than two years before commencement of the 1994 Act, the award should be made within a period of one year from the date of commencement of the Act, (31st March, 1994). Therefore by the Amendment Act of 1996, the proceedings in respect of notices given prior to March 31, 1992 stood lapsed if award was not published within one year from March 31, 1994.

10. In the case in hand, though 80% of the assessed compensation was paid in advance to the petitioners there was no declaration of award by the authorities under section 7A of the 1948 Act within the statutory period of time. Even if it is accepted that notice under section 4(1a) of the 1948 Act was issued prior to 31st March, 1992, no award having been passed by 31st March 1995, the notice is deemed to have lapsed by operation of law. The Land Acquisition (West Bengal Amendment) Act, 1997 inserted sub section (3A) and (3B) in section 9 of the Principal Act of 1894. But the said Act has no provision for revival of lapsed notices which already stood lapsed on 31st March, 1997 for non compliance of the provision of the Amendment Act of 1996. The Amendment Act of 1997 saves only those notices under section 4(1a) which would have lapsed on the midnight of 31st March, 1997 or on subsequent dates.
11. The said proposition of law has been dealt with in the judgment in State of West Bengal v/s Sabita Mondal (supra) and Smt. Mandodori Bhakat (supra).
12. In the premise, it can be concluded that in view of lapse of the acquisition proceedings by operation of law due to non-publication of award by 31st March, 1995, the title of the petitioners revive. The plots have been admittedly utilised by the State authorities.

13. In view of the same, the petitioners are entitled to compensation at the present market rate upon initiation of proceedings under The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. In the alternative, the State respondents are at liberty to issue a proposal for direct purchase of the plot in question from the petitioners at the present market rate.
14. The respondents are directed to initiate proposal for direct purchase of the land and complete the entire process within three months from the date of communication of this order, in the alternative pay compensation to the petitioners in terms of this order within the said period of time.
15. The amount of estimated compensation paid to the petitioners in advance shall be adjusted with the amount of compensation payable or with the valuation of the land proposed to be purchased.
16. With the above observation and instructions the writ petitions being W.P. 31112 (W) of 2014 and W.P. 31113 (W) of 2014 are disposed of.
17. There shall however be no order as to costs.
18. 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)