

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

FMA 3150 of 2015
Kolkata Metropolitan Development Authority & Anr.
Vs.
Prof. M Siddiqi & Ors.

With

MAT 1145 of 2015
With
IA NO: CAN 4 of 2023
Khadim India Ltd.
Vs.
Prof. M. Siddiqi & Ors.

With

MAT 28 of 2016
The Principal Secretary, Land & Land Reforms Department & Ors.
Vs.
Prof. M. Siddiqui & Ors.

For the Appellant (KMDA)
in FMA 3150 of 2015
& Respondent in MAT 1145
of 2015 & MAT 28 of 2016

: Mr. Kishore Dutta Sr. Adv.
Mr. Satyajit Talukder, Adv.
Ms. Piu Karmakar, Adv.

For the Respondent
Nos. 1 to 18

: Mr. Shakti Nath Mukherjee, Sr. Adv.
Mr. Jayanta Kumar Mitra, Sr. Adv.
Mr. Supratim Dhar, Adv.
Mr. Soumyadeb Sinha, Adv.
Mr. Subhrajyoti Mookherjee, Adv.

For Khadim India Ltd.	: Mr. Joydip Kar, Sr. Adv. Mr. Debdutta Sen, Adv. Mr. Dinabandhu Dan, Adv. Ms. Ledia Dasgupta, Adv. Mr. Dipayan Dan, Adv.
For the KMC	: Mr. Alok Kumar Ghosh, Adv. Mr. Achintya Kumar Banerjee, Adv. Ms. Era Ghosh, Adv.
For the State	: Mr. Ayan Banerjee, Adv. Ms. Debarsee Dhamali, Adv.
Hearing Concluded on	: August 10, 2023
Judgement on	: September 08, 2023

DEBANGSU BASAK, J.:-

Scope of the appeals

1. Three appeals have been heard analogously as they emanate out of the judgement and order dated July 25, 2014 passed by the learned First Court in WP 15462 (W) of 2005.
2. By the impugned judgement and order, the learned Trial Court has held that the proceedings for acquisition had lapsed under Section 11 A of the Land Acquisition, 1894. The respondents in the writ petition have been restrained from interfering with the ownership or possession of the writ petitioners in respect of the land in question and from giving

effect or further effect to the transfer of the land to Kolkata Metropolitan Development Authority (KMDA).

Contentions of the State as appellant

3. Learned advocate appearing for the State has contended that, a notification under Section 4 of the West Bengal Land Development and Planning Act, 1948 was issued on April 22, 1955. A declaration under Section 6 of the Act of 1948 had been issued on November 16, 1956. Possession in respect of the land had been taken from the land losers. Possession of such land had been made over to the Refugee Relief and Rehabilitation Department on January 15, 1957. Award in respect of the acquisition had been published on February 12, 1968. Since the land losers did not take the amount of the award, the amount awarded had been deposited as revenue deposit on March 17, 1979. The writ petitioners had purchased 39 cottahs of land in Dag No. 395 (RS) during the period from February 1998 to March 1999 and got their names mutated with the concerned land department and Kolkata Municipal Corporation Authorities.

4. Learned advocate appearing for the State has contended that, the land which the writ petitioners had

purchased, stood vested with the State much prior to the purchase by the writ petitioners. He has contended that, once the land acquired stood vested with the State, the same cannot be divested. He has relied upon **2013 Volume 4 Supreme Court Cases 524 (Mahadeo and Others vs. State of Uttar Pradesh and Others)** and **2020 Volume 8 Supreme Court Cases 129 (Indore Development Authority vs. Manoharlal and Others)** in support of his contention.

5. Learned advocate appearing for the State has submitted that, since the entire acquisition proceedings had been completed, the question of applicability of Section 11 A of the Act of 1894 does not arise. In any event, the writ petition should have been dismissed on the ground of delay. He has relied upon **2011 Volume 5 Supreme Court Cases 394 (Banda Development Authority, Banda vs. Moti Lal Agarwal and Others)** in respect of such contention.

6. Learned advocate appearing for the State has contended that, apportionment of the compensation payable had been made in favour of all the land losers. The learned First Court had mis-appreciated the evidence on such score.

7. Learned advocate appearing for the State has contended that, the writ petition filed at the behest of the

purchasers is not maintainable. The original land losers had never challenged the acquisition proceeding. As subsequent purchasers, no legal right of the writ petitioners had been violated for them to maintain a writ petition in respect of the acquisition proceeding. In respect of such contention he has relied upon **2008 Volume 9 Supreme Court Cases 177 (Meera Sahni Vs. Lieutenant Governor of Delhi and Others).**

Contentions of KMDA as appellant

8. Learned Senior Advocate appearing for KMDA has contended that, the writ petitioners did not challenge the acquisition proceedings. In any event, writ petitioners being post vesting transferees have no right to challenge the acquisition proceedings.

9. Referring to the facts of the case, learned Senior Advocate appearing for KMDA has contended that, encumbrances created after issuance of the notice under Section 4 of the Act of 1948 does not bind the State. Purchaser of an immovable property after vesting does not acquire a valid title. The title that has been claimed by the writ petitioners on the basis of the purchases made

subsequently are void. A person having void title cannot challenge acquisition proceedings or the award.

10. Learned Senior Advocate appearing for KMDA has contended that, lack of publication notification under Section 4 of the Act of 1948 is not a valid ground of challenge. Irregularity in taking possession has also not been made a ground of challenge. In any event, original owners had accepted the acquisition by not challenging the same. Moreover, there was huge unexplained delay in filing the writ petition.

11. Learned Senior Advocate appearing for KMDA in support of his contention has relied upon ***1996 Volume 11 Supreme Court Cases 698 (Star Wire (India) Ltd. Vs. State of Haryana and Others)*** and ***2012 Volume 1 Supreme Court Cases 66 (Leelawanti and Others Vs. State of Haryana and Others)***.

Contentions of KIL as appellant

12. Learned advocate appearing for Khadim India Limited (KIL) has contended that, the writ petitioners did not challenge the notification issued under Section 4 and 6 of the West Bengal Land (Development and Planning) Act, 1948. The writ

petitioners had also not challenged the award pronounced under the Act of 1894.

13. Learned senior advocate appearing for KIL has submitted that, an area of 45 cottahs was allotted to his client by KMDA. His client had applied for addition of party in the writ petition. Such application had never been heard and also not allowed. His client had been allowed to make oral submission at the hearing of the writ petition. The authorities that had been cited on behalf of his client during the hearing of the writ petition were not dealt with save and except two. He has contended that, his client ought to have been granted an opportunity to file affidavit in the writ petition. The application for intervention in the writ petition should have been allowed.

14. Learned senior advocate appearing for KIL has submitted that, his client preferred an appeal and also filed an application under Order 41 Rule 27 of the Code of Civil Procedure, 1980 seeking leave to rely on documents which could not be brought on record before the Court as his client was not granted an opportunity to file affidavit.

15. Learned senior advocate appearing for KIL has contended that, it would appear from the affidavit filed on

behalf of the State that, the land acquisition proceedings were complete. He has referred to the contents of the affidavit of the Additional Land Acquisition Officer in this regard.

16. Learned senior advocate appearing for KIL has contended that, the learned First Court erred in holding that the award was incomplete by non-completion of the apportionment or non-payment of compensation. The learned First Court had erred in holding that, the acquisition proceedings had lapsed due to non-deposit of the compensation amount with the Treasury. He has referred to the provisions of the Act of 1948 as also the Act of 1894 and the ratio laid down in ***Indore Development Authority (supra)***.

17. Learned senior advocate appearing for KIL has contended that, the acquisition proceedings was in respect of 265.20 acres and that, holding that acquisition proceedings in respect of 33 cottahs lapsed would affect the entirety of the acquisition proceedings.

18. Learned senior advocate appearing for the KIL has contended that, possession of the entire 265.20 acres of land was taken in January 15, 1957 as would appear from the possession certificate. Post possession, a notification had been

issued under Section 11 of the Act of 1894 asking persons affected to appear with their documents of title on 2 dates fixed for enquiry. The writ petition had been filed in 2005, that is, after 48 years from the date of possession and 37 years from the date of the award. The predecessor in interest of the writ petitioners did not challenge the notifications issued under Section 4 or Section 6. He has contended that, a notice under Section 11 of the Act of 1894 presupposes issuance of a notice under Section 9 thereof.

19. Learned senior advocate appearing for the KIL has contended that, post-enquiry, an award was duly made. He has referred to the various documents which were made available on record. He has contended that, his client obtained various documents under the Right to Information Act, 2005. He has referred to the compensation apportionment made by the authorities amongst the recession in interest of the writ petitioners. He has contended that, every aspect of the title to the land was inquired into while apportioning the award.

20. Learned senior advocate appearing for the KIL has referred to the ratio laid down in ***Indore Development Authority (supra)***. Referring thereto, he has contended that, ***Indore Development Authority (supra)*** has taken into

consideration the scope and ambit of the Act of 1894 as also of Right to Fair Compensation and Transparency in the Land Acquisition (Rehabilitation and Resettlement) Act, 2013 including the interplay between them.

21. Learned senior advocate appearing for the KIL has contended that, the land in question vested with the State on January 15, 1957 when the possession thereof was taken and on the pronouncement of the award in 1968. As post vesting transferees the writ petitioners had no locus to challenge the acquisition proceedings. In support of such contention, he has relied upon **1996 volume 3 Supreme Court Cases 124 (U.P Jal Nigam, Lucknow and Another vs. Kalra Properties (P) Ltd., Lucknow and Others)** and **2012 volume 12 Supreme Court Cases 133 (V. Chandrasekaran and Another vs. Administrative Officer and Others).**

22. Referring to Section 11 A of the Act of 1894, learned senior advocate appearing for KIL has contended that, such provision was not attracted in the facts of the present case. He has relied upon **1993 volume 4 Supreme Court Cases 369 (Satendra Prasad Jain and Others)** and **U.P Jal Nigam, Lucknow and Another (supra).**

23. Learned senior advocate appearing for KIL has contended that, the finding of the learned First Court that, land acquired could not be transferred to KIL was based on proviso to Section 8 (1) (b) of the Act of 1948 which was struck down by the High Court in ***All India Reporter 1975 Calcutta 325 (Ramendra Nath Nandi & Ors. vs. State of West Bengal & Others)***. He has also relied upon ***All India Reporter 1954 Supreme Court 170 (State of West Bengal vs. Bela Banerjee & Others)***.

24. Referring to Section 2 (d) of the Act of 1948 learned senior advocate appearing for KIL has contended that, public purpose includes improvement and development of industries. According to him therefore, the change of user from settlement of immigrants to industries is permissible under the provisions of the Act of 1948.

25. Learned senior advocate appearing for KIL has contended that, the learned First Court did not construe the provisions of Section 2 (d) and Section 9 of the Act of 1948 harmoniously.

26. Learned senior advocate appearing for KIL has contended that, the writ petitioners, as subsequent purchasers, cannot claim any right title and interest in

respect of the surplus land which was vested in the state. He has relied upon **2005 volume 1 Supreme Court Cases 558 (Govt. of A.P and Another vs. Syed Akbar)** and **All India Reporter 1999 Calcutta 212 (Indian Vegetarian Congress and Others vs. State of West Bengal & Others)**.

27. Learned senior advocate appearing for the KIL has contended that, the writ petition should be dismissed on the ground of delay alone. In support of such contention he has relied upon **2008 volume 4 Supreme Court Cases 695 (Swaika Properties (P) Ltd. And Another vs. State of Rajasthan and Others)**.

Contentions of the writ petitioners.

28. Learned senior advocate appearing for the writ petitioners has referred to the facts of the case. He has contended that, 16 persons who were highly qualified doctors purchased 39 cottahs of land in RS Dag No. 395 Mouza Laskarhat by 8 several registered Deeds of Conveyance during the period 1998 to 1999. Such plot of land was originally owned by Mr. Panchu Mondal and Mr. Bholanath Mondal both sons of Mr. Atul Chandra Mondal. Prior to the purchase, his client had made necessary enquiries and found that the land in question was not acquired by any authority. The concerned

Block Land and Land Reforms Officer had recorded the names of the writ petitioners in the relevant records and issued Mutation Certificates in respect thereof. In the record of rights the State of West Bengal was not shown to be having any rights in respect of the land in question. Kolkata Municipal Corporation had also mutated the name of the writ petitioners in respect of the land in question and collected tax from them. The writ petitioners had given up 5 per cent of the total area of land in favour of Kolkata Municipal Corporation on amalgamation. The Additional District Magistrate had issued conversion certificate from agricultural to residential use in favour of the writ petitioners. No objection certificate under the Urban Land (Ceiling and Regulation) Act, 1976 had been issued by the competent authority in favour of the writ petitioners. Kolkata Municipal Corporation had sanctioned a building plan in respect of the land in question. The writ petitioners had obtained housebuilding loan for construction. The writ petitioners who own the land had entered into a development agreement with the writ petitioner No. 17.

29. Learned senior advocate appearing for the writ petitioners has contended that, on July 31, 2001 KMDA demolished the boundary wall on the land belonging to the

writ petitioners. The writ petitioners had lodged a First Information Report with regard thereto. Even thereafter, on December 11, 2001 the competent authority of KMDA had referred to the writ petitioners as owners in a letter of that date written to the Kolkata Municipal Corporation Authorities.

30. Learned senior advocate appearing for the writ petitioners has contended that, the petitioners approached different authorities but of no avail. None of the authorities had provided any information regarding any acquisition. Then, the petitioners had been served with a notice regarding updating of the records issued on January 29, 2003 in relation to case No. 1 of 2003 under Section 50 of the West Bengal Land Reforms Act, 1955. He has contended that, no steps were taken after the notifications under Sections 4 and 6 of the Act of 1948. The State had never taken possession of the land in question and that possession thereof had always remained with the owners. State has not been able to establish taking over of possession by the records produced. No notice of the acquisition proceedings had been served upon the erstwhile owners. No local publication had been made as required under Section 4 of the Act of 1948.

31. Learned senior advocate appearing for the writ petitioners has contended that, no satisfaction required to be returned under Section 4 of the Act of 1948, was arrived at, and recorded, by the State. He has relied upon **70 Calcutta Weekly Notes 359 (Gopalpur Land Development Society vs. State of West Bengal & Ors)** in this regard.

32. Learned senior advocate appearing for the writ petitioners has contended that, the acquisition was never given effect to nor carried forward. Acquisition had been made for a special purpose under a special Act. Admittedly the land had never been utilized for such purpose. Relying upon **1995 Volume 3 Supreme Court Cases 434 (Municipal Corporation for City of Pune and Another vs. Bharat Forge Co. Ltd. and Others)** learned Senior Advocate appearing for the writ petitioners has contended that, where a statutory provision has not been used for a considerable period of time then, the doctrine of desuetude becomes applicable. He has contended that, such a doctrine has to be applied if the factual scenario requires its application.

33. Learned senior advocate appearing for the writ petitioners relying upon **2009 volume 4 Calcutta High Court Notes 276 (State of West Bengal & Ors. vs. Asiatic**

Society Investment Ltd. & Ors.) has contended that, no apportionment was made in respect of the compensation receivable by the different claimants. In absence of apportionment being made, the award cannot be said to be complete. He has also relied upon **63 Calcutta Weekly Notes 851 (Rabindra Kumar Basu vs. S. K. Banerjee and Ors.)** and **74 Calcutta Weekly Notes 349 (Biswamitra Shukla and Others vs. Land Acquisition Collector, Burdhaman & Ors)** in support of such contention.

34. Relying upon **AIR 1961 Supreme Court 16 (State of West Bengal and Others vs. Naba Kumar Seal)**, learned Senior Advocate appearing for the writ petitioners has contended that, the property in an acquisition proceeding becomes vested in the Government on the making of the award. In the facts and circumstances of the present case, there was no valid award and therefore the land could not have been treated to be vested with the State.

35. Learned Senior Advocate appearing for the petitioners has questioned the maintainability of the appeal claimed to be on behalf of the State in view of Section 79 of the Code of Civil Procedure, 1908. Relying upon in **1971 Volume 3 Supreme Court Cases 821 (Municipal Corporation of the City of**

Ahmedabad vs. Chandulal Shamaldas Patel and Others)

he has contended that the appeals filed by KMDA and KIL are also not maintainable.

36. Learned Senior advocate appearing for the writ petitioners has contended that, since there was no award as there was no apportionment between the Mondal brothers there was no question of making the award completed after the expiry of the period prescribed under Section 11A of the Act of 1894. Incomplete award could not have been completed within two years of commencement of the 1984 Amendment Act had come into force on September 24, 1984. Consequently the land acquisition proceedings had lapsed as correctly held by the learned First Court.

Response of KIL as to maintainability of appeal

37. In response, learned Senior Advocate appearing for KIL has contended that, ***Chandulal Shamaldas Patel and Others (supra)*** does not lay down the correct law with regard to person aggrieved entitled to prefer an appeal. With regard to such contention he has relied upon ***1994 Volume 6 Supreme Court Cases 74 (N. Krishnamachari vs. Managing Director, SPSRTC, Hyderabad and Others)*** and ***1996***

Volume 6 Supreme Court Cases 229 (Secretary, Ministry of Works & Housing Government of India vs. Mohinder Singh Jagdev and Others).

Maintainability of the Appeals

38. The writ petitioners have questioned the maintainability of MAT 2 of 2016 as it has been filed by the Principal Secretary, Land and Land Reforms Department and not by the State of West Bengal. In ***Municipal Corporation of the City of Ahmedabad (supra)*** the Supreme Court has observed that, since the Municipal Corporation was impleaded as the fourth respondent before the High Court and no relief was claimed against it, although, the property was notified for acquisition for the use of the Municipal Corporation, it did not confer any interest in the Municipal Corporation so as to enable it to file an appeal against the order of the High Court allowing the petitioner.

39. The ***Municipal Corporation of the City of Ahmedabad (supra)*** has been considered by the Supreme Court in subsequent judgements. In ***N Krishnamachari (supra)*** the Supreme Court has observed as follows :-

“ 2.....In Ahmedabad Municipal Corpn. case [(1971) 3 SCC 821] the Bench had held that when

the property was acquired for the benefit of the Municipal Corporation by the State, though ultimately the municipality may be benefited, it has no right to file an appeal against the decision of the High Court as the Corporation is not an interested party. It would appear that Section 3(b) of the Land Acquisition Act, definition of "person interested" had not been brought to the attention of the learned Judges. When Section 3(b) defined in a wide language, would bring within its ambit the beneficiary to be a person interested, the omission to bring to the notice of the Court important provisions of the law constitutes an infirmity in the judgment. However, in later decisions starting with Himalayan Tiles case [(1980) 3 SCC 223 : (1980) 3 SCR 235] this Court consistently has held that the beneficiary is a person interested to protect the interest which the beneficiary seeks to acquire in the land under the notification, including perfect title to the property and payment of proper compensation. Therefore, it is entitled to challenge the award when it was made without notice to it even by filing a writ petition under Article 226 of the Constitution, apart from impleading itself as a party respondent in the acquisition proceedings or pending appeal or independently filing an appeal under Section 54 of the Act. In view of this later development of law, we do not find that the conflict any longer subsists. Therefore, we hold that APSRTC is a person interested within the meaning of Section 3(d) of the Act and that, therefore, it is entitled to support the validity of the notification issued under Section 4(1) of the Act when it is the subject-matter of the challenge in the High Court. The High Court is, therefore, not right in its conclusion that

the Corporation is not an interested party and the High Court has committed grievous error of law in refusing the review petition. But, however, that order is not before us.”

40. Section 79 and Order 27 Rule 1 of the Code of Civil Procedure, 1908 has been considered in **Secretary, Ministry of Works & Housing Government of India and Others (supra)**. It has observed rejecting the contentions raised on behalf of the writ petitioners herein as follows :-

“5. Having given due consideration to the contentions of the counsel and having gone through the facts and circumstances of the case, first question that arises is whether the appeal has been competently laid? It is not expected and cannot be disputed that the Union of India can lay the suit and be sued under Article 300 of the of the Constitution in relation to its affairs. Under Section 79 read with Order 27 Rule 1 Code of Civil Procedure, in a suit by or against the Central Government, the authority to be named as plaintiff/defendant shall be the Union of India. The Secretary, Ministry of Works and Housing is a limb of the Union of India transacting its functions on behalf of the Government under the Department concerned as per the business rules framed under Article 77 of the Constitution. Therefore, the appeal came to be filed by the Secretary, though wrongly described. The nomenclature given in the cause title as Secretary instead of Union of India, it is not conclusive. The meat of the matter is that the Secretary representing the Government of India have filed the appeal obviously on

behalf of the Union of India. Accordingly, we reject the first contention.”

41. Acquired land had been transferred in favour of KMDA and a portion to KIL. KMDA and KIL in the facts and circumstances of the present case have to be considered as persons interested within the meaning of Section 3 (b) of the Act of 1894. Therefore, it has to be held that, the appeals at the behest of KMDA and KIL are maintainable as the impugned order affects the rights devolving to KMDA and KIL in respect of land acquired in an acquisition proceeding.

Findings

42. Writ petitioners Nos. 1 to 18 had by eight several registered deeds of conveyances between the period February 25, 1998 and March 25, 1999 had claimed to acquire land measuring 39 cottahs on a plot being RS Dag No. 395, Mouza Laskarhat. The quantum of land that the writ petitioner had claimed to be owners of, is disputed on behalf of the KIL.

43. The records that have been made available to the Court have established that, a notification under Section 4 of the Act of 1948 was issued on April 23, 1955 in respect of a large plot of land which included RS Dag No. 395, Mouza Laskarhat. The public purpose that had been disclosed in the

notice under Section 4 of the Act of 1985 was requirements of land for settlement of migrants of East Bengal / East Pakistan. Notification under Section 4 of the Act of 1948 have been published in the Official Gazette on May 12, 1955. A declaration under Section 6 of the Act of 1948 had been issued on November 16, 1956 and published in the Official Gazette on December 6, 1956.

44. Possession of the land covered by the notification under Section 4 and 6 of the Act of 1948 had been taken on January 15, 1957. Competent authority had made and published an award dated February 12, 1968. Panchu Gopal Mondal and Bholanath Mondal as awardees had chosen not to collect the award money. Consequently, the award money had been deposited under revenue deposit on March 17, 1969.

45. The writ petitioners herein have traced their title to RS Dag No. 395, Mouza Laskarhat through Panchu Gopal Mondal and Bholanath Mondal. Writ petitioners had purchased the land from Panchu Gopal Mondal and Bholanath Mondal.

46. Subsequent to the purchase of the land by the writ petitioners, they applied for mutation in the record of rights with the concerned Block Land and Land Reforms Officer who mutated their names on November 4, 1999. Kolkata Municipal

Corporation had also mutated the name of the writ petitioners on July 11, 2000, in their records. Urban Land Ceiling Authority have granted No-Objection Certificate in favour of the writ petitioners on January 19, 2001. Kolkata Municipal Corporation Authorities had sanctioned a building in favour of the writ petitioners on May 15, 2001.

47. The Refugee Rehabilitation and Relief Department of the State of West Bengal had relinquished the land acquired under the Act of 1948 in favour of the Land and Land Reforms Department of the State on June 6, 2003. The concerned BL&LRO had made over such land including the plot concerned to KMDA on September 26, 2003 on a long term settlement in favour of KMDA which had been granted on September 26 , 2005. A lease deed has been executed in favour of KMDA on March 23, 2008.

48. It would appear from the affidavit affirmed by the Additional Land Acquisition Officer, that, notification under Section 4 and 6 of the Act of 1948 was published on May 12, 1955 and December 6, 1956 respectively. Possession of the land was taken and had been handed over to the requiring body that is the Refugee Relief and Rehabilitation Department, Government of West Bengal on January 15, 1957. An award

had been declared on February 12, 1968 jointly in favour of Panchu Gopal Mondal and Bholanath Mondal .

49. Since payment could not be made by the authorities to the awardees due to their non-appearance, the awarded money had been placed under Revenue Deposit by cheque dated March 17, 1969.

50. Moreover, the writ petitioner had never questioned the validity of the initiation of the acquisition proceedings by the notification under Section 4 or the declaration under Section 6 of the Act of 1948. The writ petitioners had approached the Writ Court with the proposition that the acquisition proceedings were never completed. The award, if any, was not in accordance with law, there having been no apportionment. In any event payment had been stopped on the endorsement that the verification had not been done.

51. Learned First Court in the impugned judgement and order had framed the following issues :-

i. Whether the land in question had at all been acquired in accordance with law.

ii. Whether the acquisition proceedings had lapsed with effect from September 24, 1986.

iii. Whether land subjected to acquisition proceedings, initiated under the Act of 1948 for the specific purpose of resettlement of immigrants who had to migrate into West Bengal from erstwhile East Bengal / East Pakistan, for reasons beyond their control, could be kept unutilized for decades and then transferred to in connection with the Asian Gateway Project.

52. The learned First Court had held that, notifications under Sections 4 and 6 of the Act of 1948 had been issued and that possession had been taken by issuance of a possession certificate. However, the learned First Court had held that, possession if at all was only symbolic possession. The land had never been utilized. The award had never been completed. The proceedings had lapsed under Section 11 A of the Act of 1894 and was so treated by the respondent authorities. The land had been transferred to KMDA for an entirely different purpose and that such transfer was made after the writ petitioners had purchased the immovable properties.

53. The learned First Court had held that, the acquisition proceedings lapsed under Section 11 A of the Act of 1894 on

two grounds, namely, possession taken was only symbolic possession and that, the award had never been completed.

54. *Indore Development Authority (supra)* had considered the interplay of the provisions of the Act of 1894 and the Act of 2013. It has held that, deemed lapse of proceedings initiated under the Act of 1894 is occasioned when award under Section 11 of the Act of 1894 was made five years or more prior to the date of commencement of the Act of 2013 and the two conditions specified in Section 24 (2) were cumulatively satisfied, that is, possession of the acquired land was not taken and compensation not paid. It has observed that, if one of those two conditions was not satisfied, then the acquisition proceedings under the Act of 1894 would not lapse. It has further observed that, if possession was taken but compensation not paid then there would be no lapse and if compensation was paid but possession was not taken then also there would be no lapse.

55. *Indore Development Authority (supra)* has dealt with the aspect of payment of compensation and possession and the effect thereof in an acquisition proceedings under the Act of 1894.

56. It has observed that under the scheme of the Act of 1984, when the award is passed under Section 11, thereafter possession is taken as provided under Section 16, land stand vested in the State Government. It has also observed that, taking possession is not dependent upon payment. Moreover, payment of compensation has not been made a condition for taking possession under Section 16 or under Section 31 read with Section 34. Possession can be taken before tendering the amount except in the case of urgency and deposit of the amount has to follow in case the Collector is prevented from making payment in exigency as provided in Section 31 (3). In the event of not fulfilling the obligation to pay or to deposit under Section 31 (1) and 31 (2), of the Act of 1894, it is not provided that there has to be a lapse of land acquisition proceedings and increased interest follows with payment of compensation.

57. *Indore Development Authority (supra)* has observed that, once the land vests in the State, it cannot be divested even if there is some irregularity in the acquisition proceedings. It has held that there is nothing in the Act of 1894 to show that non-compliance thereof will be fatal or to lead to any penalty. It has further held that, legal fiction of

lapsing under Section 24 (2) of the Act of 2013 cannot be extended to denude title which has also vested in the beneficiary of the acquisition, corporation/legal bodies, etc., in turn, who have also conveyed title and transferred the land to some other persons after development.

58. Applying the ratio of ***Indore Development Authority (supra)*** to the facts of the present case, the possession of the land had been taken over on January 15, 1957 under the provisions of the Act of 1948. Award had been published on February 12, 1968. Apportionment amongst the co-owners of the land in question had been done as appearing from the records produced in Court. Award money had been deposited as a revenue deposit consequent upon the land losers not accepting the awarded amount, on March 17, 1969.

59. As has been noted above, the acquisition proceeding was initiated under the provisions of the Act of 1948. The Act of 1948 in Section 2 (d) has defined the public purpose to include settlement of immigrants who had migrated into the State of West Bengal on account of circumstances beyond their control. The State Government had issued a declaration under Section 4 of the Act of 1948 which was followed by a declaration under Section 6 thereof.

60. Section 8 of the Act of 1948 has provided for the application of the Act of 1894 subject to special provision for compensation. Sub-Section (1) of Section 8 of the Act of 1948 has provided that after a declaration under Section 6 of the Act of 1948 is made, the provisions of the Act of 1894 shall apply to the acquisition proceedings.

61. In the facts of the present case, the declaration under Section 6 of the Act of 1948 had been made on February 16, 1956 and thereafter, the provisions of the Act of 1894 stood attracted to the acquisition proceedings herein by virtue of Section 8 of the Act of 1948.

62. ***Indore Development Authority (supra)*** has dealt with the mode of taking possession under the Act of 1984 inter alia, in paragraphs 246 and 247 which are as follows :-

“246. Section 16 of the 1894 Act provided that possession of land may be taken by the State Government after passing of an award and thereupon land vest free from all encumbrances in the State Government. Similar are the provisions made in the case of urgency in Section 17(1). The word “possession” has been used in the 1894 Act, whereas in Section 24(2) of the 2013 Act, the expression “physical possession” is used. It is submitted that drawing of panchnama for taking over the possession is not enough when the actual physical possession remained with the landowner and Section 24(2)

requires actual physical possession to be taken, not the possession in any other form. When the State has acquired the land and award has been passed, land vests in the State Government free from all encumbrances. The act of vesting of the land in the State is with possession, any person retaining the possession, thereafter, has to be treated as trespasser and has no right to possess the land which vests in the State free from all encumbrances.

247. The question which arises whether there is any difference between taking possession under the 1894 Act and the expression "physical possession" used in Section 24(2). As a matter of fact, what was contemplated under the 1894 Act, by taking the possession meant only physical possession of the land. Taking over the possession under the 2013 Act always amounted to taking over physical possession of the land. When the State Government acquires land and draws up a memorandum of taking possession, that amounts to taking the physical possession of the land. On the large chunk of property or otherwise which is acquired, the Government is not supposed to put some other person or the police force in possession to retain it and start cultivating it till the land is used by it for the purpose for which it has been acquired. The Government is not supposed to start residing or to physically occupy it once possession has been taken by drawing the inquest proceedings for obtaining possession thereof. Thereafter, if any further retaining of land or any re-entry is made on the land or someone starts cultivation on the open land or starts residing in the outhouse, etc. is deemed to be the trespasser on land which is in possession of the State. The

possession of trespasser always inures for the benefit of the real owner that is the State Government in the case.”

63. In the facts of the present case, the learned First Court has held that, possession taken by the State if at all was only symbolic. In the facts of the present case, the possession was taken on January 15, 1957 as is established by the possession certificate. Post taking the possession a notification had been issued under Section 11 A of the Act of 1894 asking the persons affected to appear with their documents of title on 2 dates fixed for enquiry which necessarily presupposes an exercise under Section 9 thereof. KIL had obtained documents under Right to Information Act, 2005 which were disclosed in the present appeal. Award sheets had been made available to the Court which established that the award was made and compensation apportionment had been made between Panchu Gopal Mondal and Bholanath Mondal in respect of the plots concerned.

64. The writ petitioners have not challenged the initiation of the acquisition proceedings. That the writ petitioners did not challenge the acquisition proceedings particularly under Section 4 and 6 of the Act of 1948 has been recorded by the Learned First Court in the impugned judgement and order.

Possession had been taken by the State authorities as established by the possession certificate. Award had been published. Award had also been apportioned amongst the land losers. Consequently, in view of the ratio laid down in ***Indore Development Authority (supra)***, it cannot be said that, Section 11 A of the Act of 1894 stands attracted. The land in question had been acquired in accordance with law and the acquisition proceedings did not lapse under Section 11A of the Act of 1894 from September 24, 1986 or at all.

65. So called non-utilization of the acquired land has been canvased as a ground for vitiation of the acquisition proceedings. With the deepest of respect, we are unable to accept such contention. Land acquired had stood vested, in the facts and circumstances of the present case, with the State. There cannot be any question of divesting once land has stood vested in the State. Therefore, the so called non-utilization of land cannot be accepted as a ground to set aside an otherwise valid acquisition.

66. In the facts of the present case, a large area of land had been acquired. Out of the area acquired, a portion had been utilized for the purpose of refugee rehabilitation. Other portion had been made over to KMDA who, in turn, made over

a portion thereof to the KIL for the purpose of an industrial park. Establishment of an industrial park out of the acquired land is one of the declared public purposes under Section 2 (d) of the Act of 1948.

67. The writ petitioners have canvassed the actions taken by some of the State authorities subsequent to their purchase namely mutation in the record of rights, mutation the records of the Kolkata Municipal Corporation and the sanction of the building plan as steps which acknowledge the writ petitioners as owners of the land. It is trite law that, mutation in the record of rights or in the records of the Kolkata Municipal Corporation does not, create title in favour of the person whose name has been mutated. At best, it recognizes the liability to pay tax in respect of the land thereof. In any event, erroneous recording in the record of rights, will not create title in favour of the person whose name has been erroneously recorded therein.

68. ***Mahadeo and Others (supra)*** has held that, once land is acquired and mandatory requirements are complied with including possession being taken, the land vests in the State free from all encumbrances. Even if some portion of the

land has remained unutilized, it cannot be re-conveyed to the erstwhile owner by invoking the provisions of the Act of 1894.

69. *Banda Development Authority, Banda (supra)* has held that, although no limitation is prescribed for filing a petition under Article 226 of the Constitution, but one of the several rules of self-imposed restraint evolved by the superior court is that the High Court will not entertain petition filed after long lapse of time because that may adversely affect the settled/crystallized rights of the parties. It has also observed that, if the writ petition is filed beyond the period of limitation prescribed for filing of civil suit for similar cause, the High Court will treat the delay as unreasonable and decline to entertain the grievance of the writ petitioners on merits.

70. *Meera Sahni (supra)* has held that, transfer of land which is involved in the acquisition proceedings, after issuance of notification under Section 4 and 6 of the Act of 1894 was void and would not bind the Government. A subsequent purchaser has no right to challenge the acquisition proceedings but is only entitled to receive compensation

71. In similar vein ***Star Wire (India) Ltd. (supra), Leelawanti and Others (supra), U.P Jal Nigam, Lucknow***

(supra) and **V. Chandrasekaran and Another (supra)**, have held that, subsequent purchaser has no right to challenge the legality of the acquisition proceedings.

72. In view of **Indore Development Authority (supra)** we have not adverted to the prior authorities cited at the bar on the aspect of land acquisition proceedings under the Act of 1894 and interplay between the Act of 1894 and the Act of 2013 as well as the lapse of the acquisition proceedings in the facts of the present case.

Conclusion

73. In view of the discussions above we allow the appeals filed at the behest of KMDA, KIL and State. We set aside the impugned judgement and order passed in WP 15462 (W) of 2005. The writ petition being WP 15462 (W) of 2005 is dismissed.

74. We have taken into consideration the documents which KIL had sought to rely upon under Order 41 Rule 27 of the Code of Civil Procedure, 1908 in the appeal and as such CAN 4 of 2023 is allowed.

[DEBANGSU BASAK, J.]

75. I agree.

[MD. SHABBAR RASHIDI, J]