

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

FMA 689 of 2022

With

IA NO.: CAN 1 of 2022

Sri Himangshu Mallick & Anr.

Versus

The State of West Bengal & Ors.

For the appellant : Mr. Avijit Sarkar, Adv.

For the State : Mr. Supratim Dhar, Adv.

For the KMDA : : Mr. Satyajit Talukdar, Adv.
: Ms. Piu Karmakar, Adv.

Heard on : July 26, 2023

Judgement on : August 23, 2023

Md. Shabbar Rashidi, J.:

1. The instant appeal is in assailment of judgment and order passed on February 09, 2022 in WPA 4165 of 2018.

- 2.** Fact giving rise to the present litigation is that an acquisition proceeding was initiated in the year 1971 in respect of 2 Cottah 10 chittack and 36 Sq. ft. of land appertaining to premises No. 351, Prince Anwar Shah Road, Kolkata. An award was declared on January 9, 1979 in favour of predecessor-in-interest of the appellant. Being dissatisfied with the award, the predecessor-in-interest of the appellant sent a reference petition for enhancement of compensation. The reference so filed was disposed of on January 03, 1995 by modifications in the award. In the meantime the original owner of the acquired land died and the appellants stepped into her shoes.
- 3.** The appellants did not receive the award amount for which, they came up with the writ petition No. WPA 4165 of 2018 seeking direction upon the respondents for the payment of the compensation.
- 4.** By the impugned order dated February 09, 2022, learned Single Judge dismissed the writ petition on the ground of stale demand. The impugned order noted that

the appellants slept over their demand since January 03, 1995, when the award was finally modified till filing of the writ petition in the year 2018. It was also noted in the impugned order that during all this period of 23 years, the appellants never approached the appropriate court for execution of the award as the award passed under Calcutta Improvement Act, 1911 was executable before the court of Small Causes, Calcutta.

- 5.** It was contended on behalf of the appellants that they were assured by the advocate for the claimant conducting the reference case that they will be informed as and when the award money would be deposited. The said advocate expired on September 20, 2015. Since the money was not paid by the respondents, a notice was served upon the respondent through their advocate demanding the award amount.
- 6.** It has also been submitted on behalf of the appellant that by not making the payment of the award money, the respondents have violated the fundamental rights of the appellants. Learned advocate for the appellants further

submitted that learned trial court failed to consider that the appellants advanced sufficient cause which prevented them from approaching the appropriate authorities within due time.

7. Learned advocate for the appellant has relied upon the authority in the case reported in **1942 OnLine Cal 119 (Asmaboo Kurban Hossain and Ors Vs. Province of Bengal)** on the proposition that Section 82 of the Code of Civil Procedure with regard to execution of decree was not applicable in the facts of the present case.
8. Learned advocate for the appellant also submitted that although, a plausible explanation for delayed demand has been put forward, nevertheless, a claim for compensation of land acquisition is constitutional right guaranteed under Article 300A of the Constitutions of India and it has a continuous cause of action. Therefore, no limitation is prescribed for such claim. In support of such proposition, learned advocate for the appellant relied upon **2022 SCC OnLine Cal 1328 (Ajet Ali Baidya V. State of WB), (2020) 4 SCC 572 (B. D.**

Basnett v. Collector, East District, Gangtok, Sikkim and Anr.) and (2022) 7 SCC 508 (Sukh Dutt Ratra V. State of Himachal Pradesh).

9. Learned advocate for the appellant also cited the authority in **(2013) 1 SCC 353 (Tukaram Kana Joshi V. MIDC)** on the proposition that delay in approaching court is not an impediment in exercising judicial discretion and rendering substantial justice.
10. Relying on **AIR 1991 SC 1080 (Mangat Ram Tanwar V. Union of India)** learned advocate for the appellant also contended that States and the Court are duty bound to ensure payment of compensation for land acquisition.
11. On the other hand, the learned advocate for the respondent State submitted that the petitioners sat over their claim for the award money for long 23 years. The never approached the Small Causes Court, Kolkata for execution of the award in terms of the provisions of Section 77(2) of the Calcutta Improvement Act, 1911

within the limitation prescribed under Article 136 of the Limitation Act, 1963.

12. It was further contended that no reasonable explanation has been advanced for the inordinate delay of over 23 years in approaching the writ court. In the meantime, the Calcutta Improvement Act, 1911 stood repealed. The claim of the appellant stood barred by limitation. In support of their contentions State has relied upon **(2011) 5 SCC 394 (Banda Development Authority V. Motilal Agarwal and Others)**, **(1995) 4 Supreme Court Cases 683 (State of Maharashtra V. Digambar)**, **(2012) 1 Supreme Court Cases 66 (Leelawati and Others V. State of Haryana and Others)**, **1964 SCC OnLine SC 10 (State of MadhyPradesh V. Bhailal Bhai)** and **2017 SCC OnLine Cal 14082 (Nanda Roy V. State of West Bengl & Anr.)**.

13. As noted, a land acquisition proceeding under Calcutta Improvement Act was initiated in respect of 2 Cottah 10 chittack and 36 Sq. ft. of land appertaining to premises No. 351, Prince Anwar Shah Road, Kolkata

belonging to the predecessor-in-interest of the present petitioner. The proceeding was started in the year 1971 and an award was passed on January 9, 1979. The predecessor-in-interest of the writ petitioners preferred a reference, being dissatisfied with the award. Such reference was disposed by an order passed on January 03, 1995 modifying the original award.

14. It has been contended by the petitioners that Calcutta Improvement Trust never deposited the award money inspite of a direction to deposit the same within three months. Be that as it may, the award money was never paid to the claimant. In the meantime, the original claimant died and the writ petitioners succeeded the claimant.

15. Having not received the award money, learned advocate for the writ petitioners served a notice upon the respondents demanding the award money on September 20, 2017. Having seen the grievances not redressed, the appellants approached the writ court in 2018 seeking a direction upon the respondents to pay off the award

money to them. In the meantime, Calcutta Improvement Act stood repealed in the year 2017.

16. By the impugned order, learned single judge negated the claim of the writ petitioners on the ground of delay. It was contended that the appellants never approached the Small Causes Court, in terms of Section 77 (2) of the Calcutta Improvement Act, 1911, for execution of the award and no reasonable explanation has been advanced on behalf of the appellants for the inordinate delay.

17. Admittedly, the award was passed by the land acquisition collector on January 09, 1979 and the award was modified by the Calcutta Improvement Tribunal on January 03, 1995. In order to explain the delay, it has been asserted that the lawyer conducting the land acquisition proceeding on behalf of the claimant died on September 20, 2015. The appellants were dependent upon the said lawyer. Later on a letter demanding the award amount was served upon the respondent through their advocate in the year 2017.

18. Section 77 of the repealed Calcutta Improvement Act, 1911 provided for such execution in the following terms:

77. Award of Tribunal how to be determined. - (1) For the purpose of determining the award to be made by the Tribunal under the Land Acquisition Act, 1894 -

(a) if there is any disagreement as to the measurement of land, or the amount of compensation or costs to be allowed, the opinion of the majority of the members of the Tribunal shall prevail;

(b) questions relating to the determination of the persons to whom compensation is payable, or the apportionment of compensation, may be tried and decided in the absence of the assessors if the President of the Tribunal considers their

presence unnecessary; and when so tried and decided, the decision of the President shall be deemed to be the decision of the Tribunal; and

(c) notwithstanding anything contained in the foregoing clauses, the decision on all questions of law and procedure shall rest solely with the President of the Tribunal.

(2) Every award of the Tribunal, and every order made by the Tribunal for the payment of money, shall be enforced by the Court of Small Causes of Calcutta as if it were a decree of that Court.

20. It is nobody's case that the acquisition of the land belonging to the predecessor-in-interest of the appellants was done without following the due process of law. The only ground for negating the claim of the appellant noted by learned trial judge was inordinate delay in approaching the court.

21. In the case of **Ajet Ali Baidya (Supra)** the Coordinate Bench had noted that,

“20. We are, however, of the opinion that there might be some delay on the part of the petitioners in approaching this Court, but since the right to property is a valuable right flowing from Article 300A of the Constitution of India, merely on the ground of delay the State cannot deny its obligation to compensate the petitioners.”

22. It further noted that,

“23. It is immaterial that the possession of lands in question was taken in the year 1993 without any acquisition. Fact remains that the acquisition proceeding was revived only in the year 1999, by the issuance of a notice under Section 9(3A) of the Land Acquisition Act, 1894 as amended by the West Bengal State Amendment Act. The writ petitioners

***approached this Court in the year 2005.
Therefore, delay, if any, in this case, is not
as fatal so as to frustrate a claim for
compensation which is guaranteed under
Article 300A of the Constitution of India.”***

23. Mangat Ram (Supra) is also relating to acquisition under the Land Acquisition Act. The ratio laid down in the said case is directed against early disposal of the petitions for reference filed on behalf of objecting land owners. It was noted that there should be an endeavour to dispose of such applications within a period of three months of being made. In the instant case, however, the delay involved can be attributed to both the appellants/petitioners as well as the respondents. The appellants did not approach the court for a considerable period but at the same time the respondents also took enough time in disposing of the proceeding. A land acquisition proceeding was started in 1971. Award was made in 1979. The appellants preferred a reference petition in 1989 which was disposed in 1995.

24. In the case of **D. B. Basnett (Supra)** it was noted that the land was found to be acquired without following due process of law and the land owners were directed to be paid with compensation for unauthorized use and occupation of the land from the date of possession. It noted that,

“19. The result of the aforesaid would be that the respondents have failed to establish that they had acquired the land in accordance with law and paid due compensation. The appellant would, thus, be entitled to the possession of the land as also damages for illegal use and occupation of the same by the respondents, at least, for a period of three (3) years prior to the notice having been served upon them. We are strengthened in our observations on account of the judgment of this Court in LAO v. M. Ramakrishna Reddy [LAO v. M. Ramakrishna Reddy, (2011) 11

SCC 648 : (2011) 4 SCC (Civ) 633] , wherein it was held that the owner can be entitled to damages for wrongful use and possession of land in respect of which no notification is issued under Section 4 of the Land Acquisition Act, from the date of possession till the date such notification is finally published.”

25. In the case at hand, however, land was acquired in accordance with the provisions of an established law i.e. Calcutta Improvement Act, 1911. All the legal formalities under the act were duly complied with. The predecessor-in-interest of the appellants preferred an application for reference which was also disposed of in accordance with law, though with considerable delay.

26. Similarly, in the case of **Sukh Dutt Ratra (Supra)** the Hon’ble Supreme Court reiterated the right to property of an individual guaranteed under Article 300A of the Constitution of India. At the same time the Hon’ble Court was pleased to extend the benefits of getting compensation

to the petitioners for the reason that their lands were acquired without following the due procedure. In the said case, the Hon'ble Court noted that,

“18. There is a welter of precedents on delay and laches which conclude either way—as contended by both sides in the present dispute—however, the specific factual matrix compels this Court to weigh in favour of the appellant landowners. The State cannot shield itself behind the ground of delay and laches in such a situation; there cannot be a “limitation” to doing justice. This Court in a much earlier case — Maharashtra SRTC v. Balwant Regular Motor Service [Maharashtra SRTC v. Balwant Regular Motor Service, (1969) 1 SCR 808 : AIR 1969 SC 329] , held : (AIR pp. 335-36, para 11)

“11. ... ‘Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded

as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material.

But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy'."

27. The case of **Tukaram Kana Joshi (Supra)** also dealt with a case where land of an individual was acquired

without following due process of law. The Hon'ble Court upheld the right to property of a citizen and directed notification of acquisition. The Hon'ble Court also noted adjudication of delay in setting up of a stale claim equitably commensurate to substantial justice based on facts and circumstances of each case.

28. In the case of **Asmaboo Kurban Hossein (supra)**, it was held that for execution contemplated under Section 77(2) of the Calcutta Improvement Act was to be carried following the procedure laid down in the Section 82 of the Code of Civil Procedure. The Coordinate Bench of this Court held in the aforesaid case that,

“It seems to me, on hearing the learned advocate on both sides, that s. 82 of the Civil Procedure Code has got no application to an award made by the Improvement Trust Tribunal on a reference made to it by the Land Acquisition Collector of Calcutta. Section 82 occurs in Part IV of the Civil

Procedure Code, which deals with suits in particular cases, and ss. 79 to 82 of that Chapter are devoted to suits by or against the Crown or public officers in their official capacity. Section 79 lays down how the authorities are to be described in a suit by or against the Crown. Section 80 provides that no suit shall be instituted against the Crown or any public officer in respect of any act purporting to be done by such officer in his official capacity until the expiration of two months next after a notice in writing, in terms of the section, was served upon the Crown or the public officer as the case may be. Section 81 exempts a public officer who is thus sued from arrest and personal appearance. Section 82 then lays down that, when the decree is against the Crown or against a public officer in respect of any such act as aforesaid, a time shall be

specified in the decree within which it shall be satisfied; and if the decree is not satisfied within the time so specified, the Court shall report the case for orders of the Provincial Government. It further provides that execution shall not be issued on any such decree unless it remains unsatisfied for the period of three months computed from the date of such report. Thus, it seems clear that s. 82 is confined to decrees passed in suits which are referred to in previous sections and which can only be instituted after service of notice under s. 80 of the Code of Civil Procedure. The object of the section undoubtedly is to allow time and opportunity to the Crown or public officers to satisfy the decree amicably before execution proceedings are allowed to be started against them. I do not think that this provision can, be applied to an award

made by the Improvement Trust Tribunal. Under s. 71, cl. (d) of the Calcutta Improvement Act, the award of the Tribunal shall be deemed to be the award of the Court under the Land Acquisition Act, 1894. Section 26 of that Act prescribes the form of an award to be made by the Court. It lays down that the award shall be in writing signed by the Judge and shall specify that amount awarded by cl. (1) of sub-s. (1) of s. 23 and also the amounts respectively awarded under each of the other clauses of the same sub-section. Section 77, cl. (2) of the Calcutta Improvement Act provides that every award of the Tribunal and every order made by the Tribunal for the payment of money shall be enforced by the Court of Small Causes of Calcutta as if it were a decree of that Court. I am inclined to think that an award made by the Tribunal is not a

decree at all for purposes of the Civil Procedure Code. It simply specifies the amount of compensation that is allowed to the claimant under several heads and the grounds of awarding the said amount. Power is given to the Calcutta Small Causes Court to enforce the award as if it were a decree of that Court; but, as a matter of fact, it is not a decree of that Court or of the Court which actually made it. It is true that by Act XIX of 1921, sub-s. (2) was added to s. 26 of the Land Acquisition Act of 1894, and this subsection provides that every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of s. 2, cl. (ii) and s. 2, cl. (ix) respectively of the Civil Procedure Code, 1908. But as was held by their Lordships of the Judicial Committee in the case of Secretary of State for India in

Council v. Hindusthan Co-operative Insurance Society, Limited [(1931) I.L.R. 59 Cal. 55 : L.R. 58 I.A. 259.] , the Calcutta Improvement Act is a self-contained act and it merely incorporates certain provisions from the Land Acquisition Act, 1894, and it was only for convenience of drafting that the reference was so made instead of setting out in extenso the provisions which it was desired to adopt. Sub-section (2) of s. 26, which was introduced by the amending Act of 1921, cannot, therefore, be taken as a part of the Calcutta Improvement Act of 1911.

But, even assuming for the sake of argument that an award made by the Tribunal is a decree, it is not a decree to which s. 82 is applicable. Here there was no suit against the Crown or any public officer

as such, as contemplated by Part IV of the Civil Procedure Code and which could only be instituted after service of notice under s. 80 of the Code. The Collector made an award allowing compensation for land compulsorily acquired under statutory powers, and the party aggrieved exercised his right of having a reference to the Tribunal which has the right of making the final award. There is no suit and no decree against the Crown, though the award could be enforced as if it was a decree.

29. In the case of **Banda Development Authority (Supra)** the Hon'ble Supreme Court noted a delay of nine years in approaching the writ court and held that,

“17. It is true that no limitation has been 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 courts is that the High Court will not entertain petitions

filed after long lapse of time because that may adversely affect the settled/crystallised rights of the parties. If the writ petition is filed beyond the period of limitation prescribed for filing a civil suit for similar cause, the High Court will treat the delay unreasonable and decline to entertain the grievance of the petitioner on merits.”

30. In the case of **Digambar (Supra)** the Hon’ble Supreme Court noted that,

“20. Power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal

right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct.

23. Therefore, where a High Court in exercise of its power vested under Article 226 of the Constitution issues a direction, order or writ for granting relief to a person including a citizen without considering his disentitlement for such relief due to his blameworthy conduct of undue delay or laches in claiming the same, such a direction, order or writ becomes unsustainable as that not made judiciously and reasonably in exercise of its sound

judicial discretion, but as that made arbitrarily.”

31. In the case of **Leelawanti and others (Supra)** the Supreme Court negated the stale claim of the petitioners in following terms,

“13. We have considered the respective submissions and examined the records. In our view, the High Court did not commit any error by not entertaining the appellants' challenge to the acquisition of land because they did not offer any explanation for the long time gap of more than three decades between the issue of notifications under Sections 4 and 6 i.e. 1976 and filing of the writ petition i.e. 2007.”

32. In **Bhailal Bhai (Supra)** Hon'ble Supreme Court laid down that,

“21. The learned Judges appear to have failed to notice that the delay in these petitions was more than the delay in the petition made in Bhailal Bhai case out of which Civil Appeal No. 362 of 62 has arisen. On behalf of the respondents-petitioners in these appeals (CAs Nos. 861 to 867 of 1962) Mr Andley has argued that the delay in these cases even is not such as would justify refusal of the order for refund. We argued that assuming that the remedy of recovery by action in a Civil Court stood barred on the date these applications were made that would be no reason to refuse relief under Article 226 of the Constitution. Learned counsel is right in his submission that the provisions of the Limitation Act do not as such apply to the granting of relief under Art 226. It appears to us however that the maximum period

fixed by the legislature as the time within which the relief by a suit in a Civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. The court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the court to hold that it is unreasonable. The period of limitation prescribed for recovery of money paid by mistake under the Limitation Act is three years from the date when the mistake is known. If the mistake was known in these cases on or shortly after January 17, 1956 the delay in making these applications should be considered unreasonable. If, on the other hand, as Mr

Andley seems to argue, that the mistake discovered much later this would be a controversial fact which cannot conveniently be decided in proceedings. In either view of the matter we are of opinion the orders for refund made by the High Court in these seven cases cannot be sustained.”

33. In **Nanda Roy (Supra)** this court found a writ petition not maintainable as the period of limitation for claiming of title and possession to a property involved in the writ petition had already elapsed.

34. As noted, it is admitted position that the land in question was acquired in terms of the provision Calcutta Improvement Act, 1911 which, in turn, provides for acquisition of land in accordance with the land Acquisition Act, 1894.

35. Section 69 of the Calcutta Improvement Act reads as follows: -

69. The Board may, with the previous sanction of the '[State Government]', acquire land under the provisions of the Land Acquisition Act, 1894, for carrying out any of the purposes of this Act.

Explanaarion.-The power of the Board to acquire land under the Land Acquisition Act, 1894, may be exercised not only in respect of lands falling within an improvement scheme already framed but also in respect of lands relating to which the Board may frame improvement schemes in future.

- 36.** The land of the writ petitioners situated at premises No. 351, Prince Anwar Shah Road measuring 2 Cottah 10 Chittacks and 36 sq. ft. was acquired by Calcutta Improvement Trust for the scheme of the Trust being scheme No.114-B. The acquisition proceeding was started in the year 1971. The final award by the LA Collector was made on January 09, 1979. The possession of the acquired land was taken by the LA Collector on October 11, 1985. Being dissatisfied with the award the predecessor-in-interest of the petitioners preferred a

reference petition. The reference case being C.I.T. Case No. 30 of 1989 was disposed of by the Tribunal, by a judgment and order passed on January 03, 1995.

37. The judgment and order passed in C.I.T. Case No. 30 of 1989 modified the original award. The Tribunal also held in the said proceeding that the claimant was entitled for damages under Section 48A of the Land Acquisition Act @9% per annum for one year from the date of taking possession i.e. October 11, 1985 and thereafter @ 15% per annum till the amount is remitted to the tribunal. It directed the LA Collector to remit the award amount together with the interest and costs to the tribunal in terms of Section 82 (2) of the Code of Civil Procedure, within three months to be calculated from the date of transmission of the statement of costs.

38. There is nothing on the record to establish as to when the statement of costs was transmitted to the LA Collector. However, materials on record suggest that the amount was not remitted within the stipulated period of three months.

39. In fact, the materials on record reveal that even the department or the board and Tribunal were in dark about the payment of the compensation amount to the claimants.

40. The writ petitioners, being successors-in-interest of the original claimant have come up with a case that they were already reeling under frustration for the delay in payment of compensation as the land acquisition proceeding started in 1971 culminated into disposal of their valuation reference being C.I.T. Case No. 30 of 1989 on January 03, 1995 asking the LA Collector to remit the amount of compensation together with the damages and costs within three months. But the said amount was not so remitted for a considerable length of time. The claimants were assured by their advocate conducting the proceeding that proper steps for withdrawal of the amount would be taken as and when compensation money is deposited with the tribunal.

41. The Land Acquisition Collector by a writing dated June 28, 2011 requested the O.S.D. Kolkata

Improvement Trust to remit the decretal amount at the earliest revising the compensation amount to ₹. 2, 32, 315/- only, with interest calculated up to October 10, 2010. In response to such communication the O.S.D. Kolkata Improvement Trust by his writing dated April 05, 2013 informed the First Land Acquisition Collector that an amount of ₹. 1, 85, 975.68 was released towards payment of decretal amount in respect of acquisition of the premises No. 351, Prince Anwar Shah Road on July 26, 2005.

42. The Kolkata Improvement Trust took about two years to respond to a letter regarding providing fund to meet the decretal expenses payable towards the appellants. However, it does not speak of anything with regard to the amount with interest calculated till October 10, 2010. Similar information is forthcoming from the note of C.A.O, Calcutta Metropolitan Development Authority (CMDA) dated July 26, 2018.

43. Therefore, from the purport of the correspondence made between the Calcutta Improvement Trust, Land

Acquisition Collector and the Calcutta Metropolitan Development Authority, referred to above, it is evident that though the award money was paid in the year 2005 i.e. after about 10 years of the modified award, the authorities were not in the know of such deposit. Consequently, the claimant or the present appellants were never informed about such deposit to enable them to withdraw such amount. No notice in this regard was served upon the awardees specially, when the amount was not deposited within the stipulated time of three months as fixed by the tribunal. Such conduct on the part of the respondent authorities fortifies the case of the appellants that due to inordinate delay they lost hope of getting fair compensation for the land acquired of them and lost touch with the conducting advocate, out of frustration.

- 44.** Moreover, writing of the LA Collector dated June 28, 2011 discloses that the award amount carried recurring interest until payment, which was last calculated up to October 10, 2010. If that be so, since the respondents are

not in a position to demonstrate any lawful endeavor on their part to pay off the claim amount, the recurring interest on the award is continuing even today. There appears nothing on record that the award amount was ever tendered by the LA Collector to the claimant in terms of Section 31 of the Land Acquisition Act, 1894. In that view of the facts, the contention of the respondent with regard to lapse of the claim for limitation does not seem to be plausible. Not only that, the writings of the authorities, referred to above also goes to show that the authorities, from time to time acknowledged the dues of the claimants firstly, in the year 2005 when the amount was credited with the LA Collector, 2010 when the interest was calculated, 2011 when LA Collector asked for remittance of the award amount, 2013 when the writing of LA Collector was responded, 2017 when the appellants served notice through their lawyer and in the year 2018. In such view of the matter, the period of limitation, if there be any, has automatically went on extending and for this reason, at no stretch of

imagination, the claim of the appellants can be said to be barred by limitation.

- 45.** There is another aspect in the matter. Section 3 of the Indian Trust Act, 1882 reads as under: -

3.Interpretation-clause—"trust":—A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner:

- 46.** Section 123 of the Calcutta Improvement Act, 1911 provided as follows:

123. The moneys credited to the capital account shall be held by the Board in trust, and shall be applied to--

(a)

(b) meeting the cost of acquiring land for carrying out any of the purposes of this Act ;

(c) ;

(d);

(e);

(f);

(g);

(h);

47. Thus, it is declared in the statute itself that the money credited to the capital account of the Calcutta Improvement Trust was to be held by the Board in trust and was to be applied for specific purposes, including payment towards acquisition of lands for carrying out the purposes of the Act of 1911. Once, such amount was transmitted to LA Collector in terms of an award or modified award, as the case may be, such authority can be held to be holding such amount as trustee or representative of the trustee, for the benefit of the land owner whose land was acquired. In such contingency, the LA Collector or the Calcutta Metropolitan Development Authority (CMDA) can well be considered as representative of such trustee.

48. In the given facts, Section 10 of the Indian Limitation Act, 1963 would surely come in the aid of the appellants which provides hence: -

10. Suits against trustees and their representatives.—Notwithstanding anything contained in the foregoing provisions of this Act, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time.

- 49.** We have noted hereinbefore that the award amount, even if remitted to the credit of LA Collector, for its disbursal in favour of the appellants or their predecessor-in-interest was never tendered to them. No notice either was served enabling them to withdraw the same. In fact, payment of compensation has not been made as yet. The claimant having not approached the executing court does

not absolve the respondents from their liability to pay the compensation for the land acquired.

50. By now it is well settled position of law that State cannot hide behind delay & laches to evade it's responsibility after acquiring land. There cannot be a 'limitation' to doing justice.

51. Therefore, in the light of discussions made hereinabove, we are of the view that the appellants are very much entitled for the compensation of their land acquired by the respondent, in terms of the judgment and order passed on January 03, 1995 in C.I.T. Case No. 30 of 1989 (valuation) with interest calculated up to the date of payment in full. Accordingly, respondents are jointly and severally directed to make payment of such compensation to the appellants within a month hence.

52. Consequently, **FMA 689 of 2022** is hereby allowed. The impugned order dated February 09, 2022 passed in WPA 4165 of 2018 is set aside.

53. In view of the disposal of the main appeal interim application shall stand disposed of.

54. Urgent photostat certified copy of this order, if applied for, be given to the parties upon priority basis on compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

55. I agree.

[DEBANGSU BASAK, J.]