

IN THE HIGH COURT AT CALCUTTA

**Civil Appellate Jurisdiction
(Appellate Side)**

M.A.T. 358 of 2018

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I.A. No. CAN/1/ 2018 (Old No: CAN/2167/2018)

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I.A. No. CAN/2/ 2018 (Old No: CAN/2586/2018)

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

Bivash Chandra Sarkar & Ors.

With

M.A.T. 359 of 2018

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I.A. No. CAN/1/ 2018 (Old No: CAN/ 2166/2018)

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I.A. No. CAN/1/ 2018 (Old No: CAN/ 2587/2018)

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CAN/3/2022

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

Hazari Lal Das & Ors.

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Apurba Sinha Ray

For the Appellants/State : Mr. Rabindra Narayan Dutta, Adv.
Mr. Hare Krishna Haldar, Adv.

For the Respondents / : Mr. Amit Kumar Pan, Adv.
Writ petitioners Mrs. Tanushree Santra, Adv.

Heard On : 23.09.2022, 07.11.2022, 09.11.2022,
25.11.2022, 05.12.2022, 20.12.2022,
21.12.2022,

CAV On : 21.12.2022

Judgment On : 09.02.2023

Arijit Banerjee, J.:

In re: M.A.T. 358 of 2018

1. A Judgment and order dated August 7, 2017, whereby W.P. 8661 (W) of 2007 was disposed of by a learned Single Judge, is the subject matter of challenge in this appeal.

2. The undisputed facts of this case are as follows:-

(i) Land of the respondents/writ petitioners was acquired by the State, in connection with LA Case No. 4/10 of 1996-97

(ii) Notification under Section 4 of the Land Acquisition Act, 1894 (in short 'the 1894 Act') dated May 19, 1998 was published in the Calcutta Gazette on July 20, 1998.

(iii) As would appear from the aforesaid notification, in exercise of powers conferred by Section 17(4) of the 1894 Act, the Governor directed that the provisions of Section 5A of the Act shall not apply to the lands described in the schedule to the notification, since, in the opinion of the Governor, the provisions of Section 17 (1) of the 1894 Act, are applicable to such lands.

(iv) Declaration under Section 6 of the 1894 Act, dated November 5, 1998 was published in the Calcutta Gazette on January 4, 1999.

(v) No compensation was ever paid to the writ petitioners.

3. Being aggrieved by non-payment of compensation, the writ petitioners approached the learned Single Judge by filing W.P. 8661 (W) of 2007.

4. Before the learned Single Judge, it was argued on behalf of the State that physical existence of the land in question was not available at the time of inspection on December 7, 1998, and as such the State did not proceed with the acquisition.

5. The learned Judge was not impressed. His Lordship observed that after publication of declaration under Section 6 of the 1894 Act, there is nothing to show that the land of the writ petitioners was released from acquisition proceedings. Hence, it is the duty of the State to pay compensation to the writ petitioners. The learned Judge observed that LA Case No. 4/10 of 1996-1997 which was initiated by publication of notice under Section 4 of the 1894 Act, lapsed since no award was made within 2 years of publication of the Section 6 declaration, as mandated by Section 11-A of the Act. Accordingly, the learned Judge directed the Special Land Acquisition Officer, 24 Parganas (North), Barasat who had been added as a respondent pursuant to leave granted by the learned Judge, "to initiate fresh land acquisition proceeding against the petitioners in connection with the land of the petitioners for the purpose of payment of compensation under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, within the period of 12 weeks from the date of communication of the order."

6. Being aggrieved, the State has come up against the said order by way of this appeal.

7. Appearing for the State, Mr. R.N Datta, learned Advocate, argued that some of the writ petitioners died during pendency of the writ petition, before the impugned order was passed. Their legal heirs were not brought on record. Hence, the writ petition abated not only in so far as the deceased petitioners were concerned, the writ petition abated as a whole. This is because the claim of the writ petitioners was joint and could not be split up. In support of his contention, learned Advocate relied on 3 decisions of the Hon'ble Supreme Court which are as follows:-

(i) ***The State of Punjab v. Nathu Ram, reported at 1962 AIR 89.***

(ii) ***Gurnam Singh (D) Thr. Lrs. & Ors. v. Gurbachan Kaur (D) By Lrs. & Ors., reported at 2017 (3) ICC Page 1.***

(iii) ***Kishun @ Ram Kishun (dead) thru. Lrs. v. Bihari (d) by Lrs. reported at 2005(4) ICC 491.***

We shall revert to these decisions later in this judgment.

8. Mr. Dutta then referred to Section 12 of the West Bengal Land Reforms Act, 1955 which reads as follows:

“12. Land gained by recess of river or sea.- Any land gained by gradual accession to a [plot of land] whether from the recess of river or of the sea, shall vest in the State Government and the

raiyat who owns [the plot of land] shall not be entitled to retain such land as accretion thereto.]”

9. Frankly speaking with great respect, we have not been able to appreciate the relevance of the aforesaid Section in the present factual context.

10. Mr. Dutta further submitted that since the land in question was lost to the river, the acquisition proceedings must be deemed to have been withdrawn. In this connection learned Advocate referred to a decision of the Hon’ble Supreme Court in the case of ***Abdul Majeed Sahib & Anr. v. District Collector & Ors., reported at (1997) 1 SCC 297.***

11. Appearing for the respondents / writ petitioners, Mr Amit Pan learned Advocate, submitted that he is not disputing the proposition that the impugned order is a nullity in so far as the deceased writ petitioners are concerned since the writ petition abated in so far as they are concerned because of their legal heirs not being brought on record. He submitted that the claim of the surviving writ petitioners, i.e., the petitioners who were alive as on the date of pronouncement of the impugned judgment and order, survives and the order impugned is not a nullity in so far as those writ petitioners are concerned.

12. Mr. Pan further submitted that since Section 17(4) of the 1894 Act was invoked, and the concerned land was taken possession of on an urgent basis, no question of withdrawal from acquisition under Section 48 of the

1894 Act could arise. In any event a withdrawal under Section 48 requires a clear overt Act on the part of the State, which is not there in this case.

13. Relying on the decision of the Hon'ble Supreme Court in the case of **Satendra Prasad Jain & ors. v. State of U.P. and Ors. reported at (1993) 4 SCC 369**, Mr. Pan argued that Section 11A of the 1894 Act can have no application to cases where the emergency power under Section 17 of the Act is invoked. Hence, the mandate of publication of the award within 2 years from the date of publication of Section 6 declaration, did not apply in the present case. Consequently, the acquisition proceeding was alive as on January 1, 2014 when the 2013 Act came into force and 1894 Act stood repealed.

14. Relying on the decision of the Hon'ble Supreme Court in the case of **Executive Engineer, Gosikhurd Project Ambadi, Bhandara, Maharashtra Vidarbha Irrigation Development Corporation v. Mahesh and Ors. reported at 2022 (2) SCC 772**, learned Advocate argued that since the Section 6 declaration was published prior to the 2013 Act coming into force and since on the date of the new Act coming into force the acquisition proceedings were alive but no award had been published, the Collector was under a mandate to publish award on or before December 31, 2014. This was not done. Consequently the land acquisition proceedings lapsed. The State will now have to initiate new land acquisition proceedings by issuing notice under Section 11 of the 2013 Act followed by declaration under Section 19 of that Act and then determination of compensation in terms of Sections 26 to 30 of that Act.

15. We have given our anxious consideration to the rival contentions of the parties.

16. The first contention of the appellants that upon the demise of some of the writ petitioners prior to disposal of the writ petition, the entire writ petition abated, is completely meritless and borders on being frivolous. Since the legal heirs of the deceased writ petitioners were not brought on record, the writ petition surely abated in so far as such deceased petitioners are concerned. This is also admitted by learned Advocate for the respondents/writ petitioners. However, to argue that the claim of all the writ petitioners, those who were alive as on the date of pronouncement of the judgment and order appealed against, would fail by reason of death of some of the writ petitioners, would be preposterous. The surviving writ petitioners can surely maintain their claim for proportionate amount of compensation, commensurate with their respective shares in the land acquired. The respective claims of the writ petitioners were/are not such that they cannot be split up.

17. The reliance of the appellants on the decision in the case of ***State of Punjab v. Nathu Ram, (supra)*** is completely misconceived. That was a case of joint arbitral award in favour of two persons, Labhu Ram and Nathu Ram. The State preferred civil appeal from such award. During pendency of the appeal, Labhu Ram died. The State having failed to bring on record the legal representatives of Labhu Ram, the appeal abated against Labhu Ram. The Hon'ble Supreme Court held that the legal representatives of Labhu Ram are entitled to get compensation on the basis of the award, even if they are

required to be paid separately on calculating their rightful share in the land acquired, for which the compensation has been decreed. In this context, the Supreme Court made inter alia, the following observations:-“... It follows, therefore, that if the Court can deal with the matter in controversy so far as regards the rights and interests of the appellant and the respondents other than the deceased respondent, it has to proceed with the appeal and decide it. It is only when it is not possible for the Court to deal with such matters, that it will have to refuse to proceed further with the appeal and therefore dismiss it. The question whether a Court can deal with such matters or not, will depend on the facts of each case, and therefore, no exhaustive statement can be made about the circumstances when this is possible or is not possible.....

There has been no divergence between the Courts about the Courts proceeding with the appeal between the respondents other than the deceased respondent, when the decree in appeal was not a joint decree in favour of all the respondents. The abatement of the appeal against the deceased respondent, in such a case, would make the decree in his favour alone final, and this can, in no circumstances, have a repercussion, on the decision of the controversy between the appellant and the other decree-holders or on the execution of the ultimate decree between them.”

In our considered view, the aforesaid Supreme Court decision does not help the appellants at all.

18. The decision in the case of **Gurnam Singh (supra)** was relied upon by learned Advocate for the appellants for the proposition that a decree passed by the Court, if it is a nullity, its validity can be questioned in any proceeding including in execution proceedings or even in collateral proceedings whenever such decree is sought to be enforced by the decree-holder. Indeed, this is settled law. However, we fail to see as to how this decision helps the appellants. We have already expressed our opinion that the judgment and order assailed in this appeal may be a nullity as regards the deceased writ petitioners whose legal heirs were not brought on record prior to the impugned judgment being delivered. However, the judgment and order cannot be said to be a nullity vis-a-vis the writ petitioners who were alive on the date of pronouncement of the judgment.

19. The other decision of the Hon'ble Supreme Court in the case of **Kishun @ Ram Kishun, (supra)** also does not advance the case of the appellants. In that case, the High Court was in seisin of a second appeal. During the pendency of the appeal both the appellant and the respondent died. The legal heirs of neither of them were brought on record. None the less, the High Court proceeded to hear out the second appeal and set aside the judgment and order impugned therein as being contrary to Section 96(3) of the Code of Civil Procedure. In that context, the matter being carried to the Supreme Court, it was held that the decree passed by the High Court in favour of a party who was dead and against a party who was dead, was obviously a nullity. In fact, it was conceded by the respondent before the Supreme Court that the legal representatives of neither of the deceased

parties having been brought on record in the second appeal, the same stood abated. On this short ground, the High Court's decision was set aside. We do not see how the said decision applies to the facts of the present case.

20. The decision in the case of ***Abdul Majeed Sahib (supra)*** was relied upon by learned Counsel for the appellants in support of the proposition that the land in question having been lost to the river, the acquisition proceedings must be deemed to have been withdrawn. In that case what the Supreme Court observed would go against the appellants. The Court observed as follows:-

“8. The word ‘withdraws’ would indicate that the Government by its own action voluntarily withdraws from the acquisition; the Government has necessarily to withdraw from the acquisition, in other words, there should be publication of the withdrawal of the notification published under Section 4(1) and the declaration published under Section 6 by exercising the power under Section 48(1). Sub-section (2) of Section 48 would then apply. In this case, admittedly, the Government had not exercised the power under Section 48(1) withdrawing from the notification under Section 4(1) or the declaration under Section 6. The statutory lapse under Section 11-A is distinct and different from voluntary act on the part of the Government. Therefore, it must be by withdrawal of the notification by voluntary act on the part of the State under Section 48(1). Under these circumstances, the appellant is not entitled to avail of the remedy of sub-section (2) of the Section 48.”

In the present case, there is no overt act on the part of the State withdrawing from the acquisition proceedings.

21. On the other hand, the argument advanced by Mr. Pan learned Advocate for the respondents/ writ petitioner, seems to be well-founded. It is not in dispute that notification under Section 4 of the 1894 Act and declaration under Section 6 of that Act were published on July 20, 1998 and January 4, 1999 respectively. It is also not in dispute that possession of the land was taken in exercise of power under Section 17 of the 1894 Act. Section 11A of the 1894 Act stipulates that the Collector shall make an award under Section 11 within a period of 2 years from the date of the publication of the declaration under Section 6 and if no award is made within that period, the entire acquisition proceedings shall lapse.

22. In the present case admittedly no award was ever made by the Collector. However, the Hon'ble Supreme Court has held in the case of **Satendra Prasad Jain & Ors. (supra)** that Section 11A can have no application to cases of acquisition under Section 17 because the lands have already vested in the Government and there is no provision in the 1894 Act, by which land statutorily vested in the Government can revert to the owner.

23. In this connection, paragraph 15 of the reported Judgment is extracted herein below:-

“15. Ordinarily, the Government can take possession of the land proposed to be acquired only after an award of compensation in respect thereof has been made under Section 11. Upon the taking

of possession the land vests in the Government, that is to say, the owner of the land loses to the Government the title to it. This is what Section 16 states. The provisions of Section 11-A are intended to benefit the landowner and ensure that the award is made within a period of two years from the date of the Section 6 declaration. In the ordinary case, therefore, when Government fails to make an award within two years of the declaration under Section 6, the land has still not vested in the Government and its title remains with the owner, the acquisition proceedings are still pending and, by virtue of the provisions of Section 11-A, lapse. When Section 17(1) is applied by reason of urgency, Government takes possession of the land prior to the making of the award under Section 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly, Section 11-A can have no application to cases of acquisitions under Section 17 because the lands have already vested in the Government and there is no provision in the said Act by which land statutorily vested in the Government can revert to the owner.”

24. The corollary and consequence of the aforesaid would be that Section 11A of the 1894 Act, not having had any manner of application in the facts of the present case, the acquisition proceedings did not lapse and were alive as on the date of coming into force of The Right to Fair Compensation and

Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (in short, 2013 Act) i.e. on January 1, 2014.

25. In the case of ***Executive Engineer v. Mahesh (supra)*** the question that fell for determination by the Hon'ble Supreme Court was as follows:-

“Whether the two-year period specified under Section 11-A of the Land Acquisition Act, 1894 (“the 1894 Act” for short) will apply even after the repeal of the 1894 Act, or the twelve-month period specified in Section 25 of the 2013 Act will apply for the awards made under clause (a) of Section 24(1) of the 2013 Act?”

26. The Hon'ble Supreme Court referred to Section 24 of the 2013 Act which reads as follows:-

“24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.—(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894),—

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) Where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(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:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

27. The Hon’ble Supreme Court went on to hold as follows:-

“29. Given the object and purpose behind Sections 24 and 26 to 30 of the 2013 Act, we notice that practical absurdities and anomalies may arise if the two-year period for making of an award in terms of Section 11-A of the 1894 Act commencing from the date of issue of the declaration is applied to the awards to be made under Section 24(1)(a) of the 2013 Act. This would mitigate against

the underlying legislative intent behind prescription of time for making of an award in respect of saved acquisition proceedings initiated under the repealed 1894 Act, which is twofold: (i) to give sufficient time to the authorities to determine compensation payable under the 2013 Act; and (ii) to ensure early and expedited payment to the landowners by reducing the period from two years under Section 11-A of the 1894 Act to twelve months under Section 25 of the 2013 Act. In case of declarations issued in January 2012, on application of Section 11-A of the 1894 Act, the time to determine compensation under the 2013 Act would vary from a day to a month, and while in cases where the declarations were issued within twelve months of the repeal of the 1894 Act, the landowners would be at a disadvantage as an award beyond the twelve-month period specified in Section 25 of the 2013 Act would be valid. In the first set of cases, given the onerous factual and legal exercise involved in determination of compensation and the need to issue notification under Section 26(2) of the 2013 Act, publication of the awards would be impractical. Hasty and incorrect awards would be deleterious for the landowners. If the awards are not pronounced, the acquisition proceedings would lapse defeating the legislative intent behind Section 24(1)(a) of the 2013 Act to save such proceedings. We would, therefore, exercise our choice to arrive at a just, fair and harmonious construction consistent with the legislative intent.

30. A rational approach so as to further the object and purpose of Sections 24 and 26 to 30 of the 2013 Act is required. We are conscious that Section 25 refers to publication of a notification under Section 19 as the starting point of limitation. In the context of clause (a) to Section 24(1) of the 2013 Act there would be no notification under Section 19, but declaration under Section 6 of the 1894 Act. When the declarations under Section 6 are valid as on 1st January 2014, it is necessary to give effect to the legislative intention and reckon the starting point. In the context of Section 24(1)(a) of the 2013 Act, declarations under Section 6 of the 1894 Act are no different and serve the same purpose as the declarations under Section 19 of the 2013 Act.

31. Consequently, we hold that in cases covered by clause (a) to Section 24(1) of the 2013 Act, the limitation period for passing/making of an award under Section 25 of the 2013 Act would commence from 1st January 2014, that is, the date when the 2013 Act came into force. Awards passed under clause (a) to Section 24(1) would be valid if made within twelve months from 1st January 2014. This dictum is subject to the caveat stated in paras 20 to 23 (supra) that a declaration which has lapsed in terms of Section 11-A of the 1894 Act before or on 31st December, 2013 would not get revived.

32. The contention of the landowners, relying upon Rule 19 of the Right to Fair Compensation and Transparency in Land Acquisition,

Rehabilitation and Settlement (Maharashtra) Rules, 2014¹⁵ for giving a restrictive meaning and excluding Section 25 of 2013 Act is misplaced. This Rule states that the formula provided in Sections 26 to 30 of the 2013 Act would apply where a notification under Section 4(i) of the 1894 Act was issued before 31st December 2013, and an award has not been made before the 31st December 2013. The Rule refers to the formula for computation of compensation to be applied under Section 24(1)(a) of the 2013 Act, but it does not follow that Section 25 which prescribes the limitation for making of an award will not apply. For the reasons stated above, we hold that Section 25 of the 2013 Act applies to awards made under Section 24(1)(a) of the 2013 Act and the period of limitation of twelve months would commence from 1st January 2014.”

28. The effect of the aforesaid judgment is where a declaration under Section 6 of the 1894 Act was alive as on January 1, 2014, the Collector was obliged to make an award within a year from that date i.e., by December 31, 2014. Upon the Collector’s failure to do so, the acquisition proceedings would lapse. In the present case, this is exactly what happened. The declaration under Section 6 of the 1894 Act was alive as on January 1, 2014. The Collector was required to make an award by December 31, 2014. He did not do so. The entire acquisition proceedings lapsed. The State will now have to initiate fresh acquisition proceedings. There is only one piece of legislation available i.e., the 2013 Act. Hence, necessarily, the State has to

imitate fresh acquisition proceedings under a provision of the 2013 Act and carry the same to its logical conclusion in accordance with the provisions of that Act.

29. In view of the aforesaid, although the reasoning in the impugned judgment and order is sketchy, we are in agreement with the conclusion. The State Government shall initiate and complete the acquisition proceedings under the 2013 Act within a period of 4 months from date.

30. M.A.T 358 of 2018 with **I.A. No. CAN/1/ 2018 (Old No: CAN/2167/2018) I.A. No. CAN/2/ 2018 (Old No: CAN/2586/2018)** is accordingly disposed of.

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31. The facts of this case are substantially similar to that of MAT 358 of. In this case also the declaration under Section 6 was alive as on January 1, 2014, since possession had been taken over in exercise of power under Section 17 of the 1894 Act and therefore Section 11A of the Act had no manner of application. Admittedly no award was ever made by the Collector.

32. Accordingly, for the reasons recorded in the judgment and order passed in MAT 358, the acquisition proceedings stood lapsed upon expiry of December 31, 2013. In view of the aforesaid, although the reasoning in the impugned judgment and order is sketchy, we are in agreement with the conclusion. The State Government shall initiate and complete the acquisition proceedings under the 2013 Act within a period of 4 months from date.

33. M.A.T 359 of 2018 with **I.A. No. CAN/1/ 2018 (Old No: CAN/ 2166/2018), I.A. No. CAN/1/ 2018 (Old No: CAN/ 2587/2018) and I.A. No. CAN/3/2022** is accordingly disposed of.

34. There will be no order as to costs.

35. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Arijit Banerjee, J.)

I agree.

(Apurba Sinha Ray, J.)