

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

WPA/5613/2012
With
CAN 1 of 2012 (Old CAN No.7528 of 2012)
Krishnendu Saha & Anr.
-Vs-
The State of West Bengal & Ors.

For the Petitioners: Mr. Deepnath Roy Chowdhury, Adv.
Mr. Kaunish Chakraborti, Adv.,
Mr. Sk. Samiul Haque, Adv.,
Mr. Bhaskar Dwivedi, Adv.

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

For the WBHIDCO: Mr. Debabrata Banerjee, Adv.,
Mr. Samir Chakraborty, Adv.

Hearing concluded on: 20 July, 2023.

Judgment on: 11 August, 2023.

BIBEK CHAUDHURI, J. : –

1. One Krishnendu Saha and Phani Bhusan Saha, since deceased were joint owners in respect of Dag No.276 appertaining to khatian No.99/1 and 293/1 in mouza-Tarulia, JL No.21 recorded as Sali (Agricultural) land measuring about 34 decimals under Rajarhat Police Station in the district of North 24 Parganas. Be it mentioned that during the pendency of the instant writ petition, the petitioner No.2 Phani Bhusan Saha expired and his legal heirs and successors, namely, Gopal

Saha and Jayanta Saha have been substituted as petitioners No.2A and 2B in the instant writ petition. It is stated by the petitioners that the aforesaid land in question was in use and occupation and possession of the petitioners since they became the owners of the said land. The petitioners paid all rents and taxes to the State of West Bengal till 1416 BS. It is further stated by the petitioners that by a purported notification No.281/LA-4/167 of 98-99/NTP dated 11th January, 1999 under Section 4(1) of the Land Acquisition Act, 1894, the respondent No.3 required the said land for public purpose, for establishment of New Town- Rajarhat Township. The petitioners have alleged that the said notice under Section 4(1) of the Act 1 of 1894 was never served upon them and they collected the said notice under Right to Information Act on 11th June, 2010 from the officer of the LA Collector, North 24 Parganas. Further case of the petitioners is that the petitioners along with other villagers/farmers made an agitation against the impugned notification in respect of requisition and acquisition of land of Patharghata Tarulia Mouza in the name of Rajarhat- New Town project by the State authorities adopting oppressive measures. The agitation of the petitioners and other local people was suppressed by the State authorities by lodging FIR against them on the basis of which Rajarhat Police Station Case No.195 dated 11th June, 2004 under Sections 148/149/341/323/427/506/397 of the IPC was registered. Subsequently, police submitted charge-sheet against a large number of people of Patharghata and Tarulia Mouza which gave rise to GR Case No.111/04 which is still pending before the learned Chief

Judicial Magistrate at Barasat. Therefore, the petitioners were not in a position to make any objection under Section 5(A) of the Act 1 of 1894. It is also alleged that the petitioners were never served with any notice of acquisition of land under Section 9(2) of the said Act. The respondent authorities did not follow statutory provision for service of notice. Petitioners being the persons interested in respect of the land in question which was illegally acquired by the State of West Bengal, particularly the Collector, North 24 Parganas, the respondent No.3 herein, were also not in a position to file a claim for compensation in respect of the land acquired illegally for public purpose. Though, the petitioners used to reside at the relevant point of time in Mouza Tarulia, no notice under Section 9(2) of the said Act was issued to the petitioners. They were not allowed to participate in the process of passing award of compensation for the land acquired illegally under Section 11 of the said Act. The petitioners were not served with any copy of the award sheet under Section 11 of the said Act. Various provisions of Section 4, Section 11, Section 12 and Section 23 were not followed by the respondent.

2. On the above pleadings the petitioners has prayed for following reliefs:-

“a) A Writ of or in the nature of Mandamus do issue, commanding the respondent authorities to quash the impugned Notification being No.LA 4/167 of 1998/99 forthwith.

b) A Writ of or in the nature of Mandamus do issue, commanding the respondent authorities to allow the

petitioners to make objections under Section 5(A) of the Land Acquisition Act, 1894 and make claims for compensation under Sub-Section 1 and 2 of Section 9 of the said Act forthwith.

c) A Writ of or in the nature of Mandamus do issue commanding the respondent authorities to supply the statement of Award in respect of the land of the petitioners acquired in Mouza- Tarulia and to direct the respondent authorities to allow the petitioners to make application on under Section 18 of the LA Act, 1894 forthwith.

d) A Writ of or in the nature of Certiorari do issued, commanding the respondent authorities to produce the entire records and proceedings in respect of the land of the petitioners acquired, unto this Hon'ble Court, so that conscionable justice may be done to the petitioners, by quashing the impugned Notification being LA 4/167 of 1998-99 declaration, which is annexure 'P-1' and 'P-2' to this writ petition respectively.

e) Rule in terms of prayers (a), (b), (c) and (d) above.

f) An ad-interim order of injunction directing the respondent authorities not to transfer alienate of the land of the petitioners acquired by the respondent authorities in Mouza Tarulia Mouza under Police Station New Town in the District of 24 Parganas (North), under impugned notification, being No. LA 4/167 of 1998-99 which is Annexure 'P-1' to the writ petition, provincially pending disposal of this writ application.

g) And to pass such further or other order or orders as to Your Lordships may deem fit and proper."

3. Respondents No.3 and 4 and respondent No.5 have filed affidavit-in-opposition against the above mentioned writ petition. In their affidavit-

in-opposition they specifically denied the case of the petitioners. It is the specific case of the respondents No.3 and 4 that the Joint Secretary to the Government of West Bengal in Housing Department issued a notice dated 10th November, 1998 for acquisition of 152.06 acres of land in Mouza Tarulia for setting up of a new satellite town ship under Act 1 of 1894 to the Collector, North 24 Parganas requesting him to initiate LA proceedings for acquisition of the said 152.06 acres of land. The said notice was appended with a letter of the Executive Engineer-II, Planning Division, Housing Directorate dated 2nd November, 1998 wherein it is stated, “Hon’ble MIC Housing has expressed his desire for quit acquisition of these areas for Rajarhat-New Town Project.” It is also pleaded on behalf of the respondent No.3 and 4 producing a copy of gazette notification dated 5th April, 1999 that the disputed land along with other lands in Mouza Tarulia were acquired in exercise of the powers conferred by sub-Section (4) of Section 17 of the Land Acquisition Act, 1894. Therefore, the provisions of Section 5A of the said Act were not made applicable to the lands in question in view of the provisions contained in Sub-Section (1) of Section 17 of the said Act.

4. The respondent No.5 has filed a supplementary affidavit-in-opposition controverting the allegations made by the petitioners in the writ petition. It is specifically stated by the respondent No.5 that plot No.276 of Mouza-Tarulia, presently under New Town Police Station was having a total area measuring about 1.26 acre. The said plot was acquired in LA Case No.4/167 of 1998/99 for the purpose of Rajarhat-New

Township Project observing all statutory formalities. Possession of land was taken and made over to the Housing Department, the requiring body on 10th December, 1999. Notice under Section 9(3) and (4) of the Act 1 of 1894 was issued in the name of the writ petitioners but the said notice could not be served probably because they did not live in the locality in the mouza Tarulia at the material point of time as revealed from the address given in the writ petition. Neither did the writ petitioners appear before the LA Collector for verification of his title in the land, nor after the acquisition of land with the claim for payment of compensation. Therefore, in the year 2007 the LA Collector deposited the compensation amount of Rs.1,30,652/- for an area of 0.16380 decimal of land with the learned Land Acquisition Judge at Barasat. The writ petitioners first approached the LR Collector by filing an application under the RTI Act, 2005 on 18th February, 2010, that is after about 10 years of acquisition. During this period the land has been fully developed and utilized for the purpose for which it was acquired. It is also stated by the respondent No.5 that the writ petitioners were not the owners of entire plot No.276 of Mouza Tarulia. Petitioner No.1 was the owners of 10 kathas of land and the petitioner No.2, Phani Bhusan Saha, since deceased was also the owner of a portion of land in plot No.276 measuring about 10 kathas. Thus, both the petitioners jointly were owners of about 20 kathas of land equivalent to 33 decimals. The respondent No.5 also pleaded that as the land was acquired under the provision of Section 17(4) of the said Act, the

petitioners were not allowed to make objection under Section 5A of the Act 1 of 1894.

5. The petitioner No.1 has filed a supplementary affidavit reiterating their case made in the instant writ petition. It is stated on behalf of the petitioners that they paid tax (khajna) in respect of the subject land till the year 2021 and the respondents also received the same. The recent photograph of the said land show that the said land is lying vacant and there are some illegal encroachment and hutments on the said land. Therefore, the respondent's plea that the said land was developed under the claim of Rajarhat- New Town satellite Township is absolutely false. The petitioners also filed affidavit-in-reply against the affidavit-in-opposition filed by the respondent No.5. Learned Advocate for the petitioners submits that indisputably the petitioners were the owners of 34 decimals of land in plot No.276 corresponding to khatian No.99/1 and 293/1 of mouza Tarulia by virtue of 2 deeds of sale. Referring to annexure R1 of the affidavit-in-opposition filed on behalf of the respondent No.3 and 4 it is submitted by the learned Advocate for the petitioners that the Housing Department to the Government of West Bengal being the requiring body requested the Collector, North 24 Parganas, Barasat by a letter dated 10th November, 1998 to take step to acquire land in Mouza Tarulia measuring about 152.06 acres. Along with the said letter the requiring body sent 20 sets of land acquisition proposals in respect of land situated in Mouza Tarulia. Thus, the proposal for acquisition of 152.06 acres of land including the land in plot No.276

was mooted by the Housing Directorate, Government of West Bengal accordingly LA Case No.4/167 of 98-99 was initiated on publication on 5th April, 1999. In the said gazette notification, notice under Section 4(1) of the Act 1 of 1894 dated 11th January, 1999 was published. The notification is reproduced below:-

“In exercise of the powers conferred by sub-section (4) of section 17 of the Land Acquisition Act, 1894 (Act 1 of 1894), the Governor is pleased to direct that the provisions of section 5A of the Act shall not apply to the lands as described in the Schedule below to which in the opinion of the Governor, the provisions of sub-section (1) of section 17 of the said Act are applicable.”

6. It is strenuously contended by the learned Advocate for the petitioners that they were not served with any notice under Section 4(1) of the said Act. Section 4(1) of the said Act runs thus:-

“4. Publication of preliminary notification and powers of officers thereupon.- (1) Whenever it appears to the [appropriate Government] that land in any locality [is needed or] is likely to be needed for any public purpose [or for a company] a notification to that effect shall be published in the Official Gazette [and in two daily newspapers circulating in that locality of which at least one shall be in the regional language], and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality [(the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification)].”

7. Plain reading of the aforesaid provision goes to suggest that publication of notification in the official gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language is the sufficient compliance of the requirement of Section 4 and no personal service is necessary.

8. It is strenuously argued by the learned Advocate for the petitioners that after acquisition of land, it is the duty of the Collector under Section 9 of the said Act to cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him. Sub-Section (3) of Section 9 states that the Collector shall also serve notice to the same effect on the occupier (if any) of such land and all of such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as residing or have agents authorized to receive service on their behalf, within the revenue district in which the land is situated. Sub-Section (4) of Section 9 states that in case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business.

9. In the instant case, the respondents did not serve any notice under Section 9(3) or 9(4) of Act 1 of 1894. It is contended on behalf of the respondents that the respondents did not know the residential address of the petitioners and therefore notice under Section 9 was served by public

service on the land intended to be acquired. It is submitted by the learned Advocate for the petitioners that causing public notice under Section 9(1) of Act 1 of 1894 is not sufficient compliance of the service of notice under Section 9 of the said Act. Sub-Section (3) and (4) of Section 9 cast a mandatory obligation upon the Collector to serve notice upon the occupier or any person interested in such land that the Government intends to take possession of the land.

10. Next limb of argument on behalf of the petitioners is, in order to bypass the obligation and responsibility towards her objection against acquisition under Section 5A of the said Act, the State Government adopted the special power of acquisition in case of urgency contemplated under Section 17 of the said Act. Placing reliance on a Delhi High Court judgment reported in **AIR 1995 Del 391: Sudhir Chaudhuri vs. Union of India**, it is contended by the learned Advocate for the petitioner that in the notification under Section 4 of the Act 1 of 1894 read with Section 17(1) of the Act it is apparently found that no urgency was pleaded or stated in the said notification published in the official gazette which is absolutely necessary and mandatory if the provisions of Section 4 and Section 17 are read conjointly. It is only through the notification under Section 4 read with Section 17(1) that the people become aware of the intention of the acquiring authority to acquire the land for a public purpose and urgently. In other words the ground of urgency must be pleaded in the notice under Section 4 read with Section 17 of the Act 1 of 1894. In this regard learned Advocate for the petitioner draws my

attention to the notice dated 10th November, 1998 issued by the requiring body and a letter dated 2nd November, 1998 issued by the Executive Engineer-II, Planning Division, Housing Directorate to the Chief Engineer, Housing Directorate. In the said letter dated 2nd November, 1998 it is stated by the Executive Engineer-II, Planning Division, Housing Directorate –

“The Hon’ble MIC, Housing has expressed his desire for quit, acquisition of these areas for Rajarhat-New Town Project.”

11. It is submitted by the learned Advocate for the petitioner that mere fanciful wish of the Minister-in-charge cannot be a ground of urgency for acquisition of land. The subjective consideration which prompted the Minister-in-Charge, Housing Department to acquire the land through a short cut method of Section 17(1) is required to be stated in the notice for requisition under Section 4 of the said Act for consideration of the general public and specially the land losers as to whether application of Section 17(1) in acquiring the land was fare and justified. Learned Advocate for the petitioners further submits that Section 17 of the Act 1 of 1894 gives special power to the appropriate government to acquire any land needed for public purpose in cases of urgency on the expiration of 15 days from the publication of notice mentioned in Section 9 of the said Act. Therefore, in case of an urgent acquisition of land the appropriate government is under obligation to issue a public notice under Section 4(1) read with Section 17(1) of the said Act. At the same time the appropriate government shall also cause notice to be given at the convenient places on

or near the land stating that the government notice to take possession of the land, and that claim to compensation for all interests in such land may be made to him.

12. In the instant case the petitioners were not served any notice under Section 9(4) of the Act 1 of 1894. He also refers to another decision of the Division Bench of Allahabad High Court in the case of **Ajabdul Bux & Ors. vs. State** reported in **AIR 1982 Allahabad 435**, to satisfy this Court that the state respondents have failed to place any material to show as to why all proceedings of Section 5A were dispensed with and no objection was allowed to be submitted by the persons interested against the proposed acquisition.

13. It is also submitted by the learned Advocate for the petitioners that the petitioners did not know till date as to whether any award in the form of compensation has been paid in respect of the aforesaid land acquisition proceedings initiated under Act 1 of 1894. The petitioners never received any notice to receive any award under the said Act. In view of such circumstances, if at all the court decides that the acquisition proceeding was lawful and proper, the petitioners are entitled to get an award on determination of compensation under Section 24(1)(a) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

14. Learned Advocate for the state respondents, on the other hand submits that the writ petition filed by the petitioners is absolutely speculative and liable to be quashed. In support of his contention it is

submitted by the learned Additional Government Pleader that in paragraph 2 of the writ petition the petitioners specifically stated that the land in question was in use and occupation and possession of the petitioners since long back. They are the owners of the said small plot of land. When it is specifically pleaded that the petitioners were in occupation and possession of the disputed land, publication of notice in the official gazette is sufficient compliance under Section 4 of the Act 1 of 1894. Publication of notice under Section 4 of the Act is sufficient proof of knowledge of service of notice upon the persons interested on the land. The learned Additional Government Pleader next takes me to paragraph 5 of the writ petition where the petitioners stated that they along with other villagers/farmers of Mouza-Tarulia and Patharghata showed objection against the impugned notification. The said statement made in paragraph 5 of the writ petition is practically an admission of knowledge of LA proceeding in respect of land in question, owned by the petitioners. In view of such circumstances they cannot subsequently challenge service of notice upon them in connection with LA Case No.4/167 of 1998-99. Learned Advocate for the state respondents further submits that in paragraph 9 of the writ petition the petitioners specifically contended they are residing in Mouza acquired. Thus, admittedly, the petitioners at the relevant point of time used to reside in Mouza Tarulia. Notice under Section 9(4) of the Act was sent to the petitioners by post in Mouza Tarulia but it was returned with postal endorsement "refused".

15. In this regard it is submitted by the learned Advocate for the petitioner that Tarulia was a big mouza and the petitioners reiterate that they did not receive any notice of the said LA proceeding.

16. The learned Advocate for the state respondents submits that the notice dated 11th January, 1999 clearly stated:-

“In exercise of the powers conferred by sub-section (4) of section 17 of the Land Acquisition Act, 1894 (Act 1 of 1894), the Governor is pleased to direct that the provisions of section 5A of the Act shall not apply to the lands as described in the Schedule below to which in the opinion of the Governor, the provisions of sub-section (1) of section 17 of the said Act are applicable.”

Thus, the aforesaid notification contains objective opinion of the Governor and his satisfaction that in respect of the aforesaid LA case, the provisions of Sub-Section (1) of Section 17 of the said Act are applicable. Therefore, while issuing such notification under Section 4(1), it was specifically stated therein that the provisions under Section 17(4) of the Act would apply in the acquisition proceedings thereby the requirement as contemplated under Section 5A of the Act was dispensed with. It is contended on behalf of the State that all provisions relating to acquisition of land was scrupulously followed by the concerned authority and there is no ground to grant any relief to the petitioners.

17. The learned Advocate for the WBHIDCO, respondent No.5 herein has adopted the submission made by the learned Advocate for the state respondents. In addition he refers to an unreported decision passed by a Coordinate Bench in the case of **Sri. Bhola Nath Koley vs. The State of**

West Bengal & Ors : WPA 1065 of 2011, decided on 6th July, 2022. It is submitted by the learned Advocate for the petitioners that in respect of land acquisition in the instant case estimate award was made on 25th November, 1999. The petitioners have filed the writ petition in the year 2012. It is submitted by the learned Advocate on behalf of the HIDCO referring to paragraph 346 of the Full Bench decision of Hon'ble Supreme Court in **Indore Development Authority vs. Manoharlal & Ors.** reported in **(2020) 8 SCC 129** wherein the Hon'ble Supreme Court observed as hereunder:-

“In matters of land acquisition, this Court has frowned upon, and cautioned courts about delays and held that delay is fatal in questioning the land acquisition proceedings. In case possession has not been taken in accordance with law and vesting is not in accordance with Section 16, proceedings before courts are to be initiated within reasonable time, not after the lapse of several decades.”

18. Relying on the observation of the Hon'ble Supreme Court as quoted above, a Coordinate Bench of this Court in **Bhola Nath Koley** (supra) held:-

“...indolent approach of the petitioner in questioning the steps taken by the respondent-authorities in terms of the scheme of the said Act of 1894 appears to have made his claim of return of land on derequisition since there is no urgency in invoking section 17(4) based on non-utilization of land of the petitioner, has become stale.”

19. In reply, learned Advocate for the petitioners submits that Section 45 of the Act 1 of 1894 details out the provision as to how service of notice is to be effected. In the first place service of notice under the Act shall be made by delivering or tendering a copy thereof as far as practicable on the person named therein. Secondly, when such person cannot be found, the service may be made on any adult male member of his family residing with him and if no such adult male member can be found, the notice may be served by fixing the copy on the outdoor of the house in which the person therein named ordinarily tells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the Court house and also in some conspicuous part of the land to be acquired. It is primarily pleaded by the petitioner that non compliance of Section 17(4) of the Act and failure on the part of the Collector to state the grounds of urgency in the notice under Section (4) read with Section 17(4) of the Act makes entire acquisition proceeding illegal and the land in question should be derequisitioned.

20. Lastly, it is vehemently urged by the learned Counsels for the petitioners that land in question has not at all been developed and it is lying as an open land. Therefore, there is no iota of evidence of establishment of Satellite Township over the land in question.

21. In view of such circumstances, the petitioners are entitled to get back the possession of the land by way of derequisitioned.

22. Having heard the learned Counsels for the rival parties and on careful scrutiny of entire materials on record as well as the decisions cited by the learned Counsels for the parties, petitioner's prayer for derequisitioned of land in question following the provision of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 cannot be entertained under the provision of Section 24 of the 2013 Act because of the fact that the preconditions of Section 24 are not applicable under the facts and circumstances of the present writ petition. As observed by the Constitution Bench in **Indore Development Authority** (supra) Section 24(2) curls out an exception to Section 24(1)(b). If possession of the acquired land has been taken and compensation has not been paid (including where it was tendered but refused, and thereafter no dispute in court was made or only deposit in State treasury was made), the one possible consequence is that compensation must be paid with interest as per the provisions of the 1894 Act, but there would be no lapse of the proceedings. On the contrary, if possession of the acquired land has been taken and Section 24(4) proviso applies, i.e., compensation in respect of a majority of land holds has not been deposited in the account of the beneficiaries, then, all the beneficiaries concerned shall be entitled to compensation in accordance with 2013 Act, but again there would be no lapse of proceeding.

23. In the instant case notice under Section 4 read with Section 17(1) was published in the official gazette on 5th April, 1999. In **Hamid Ali**

Khan (D) Through LRS & Anr. vs. State of U.P & Ors, Civil Appeal NO.1267 of 2012 decided on 23rd November 2021 it is held by the Hon'ble Apex Court that the existence of exceptional circumstances justifying invocation of Section 17(4) must be established in the wake of challenge. The aforesaid judgment was duly considered by a Coordinate Bench in **Bhola Nath Koley** (supra). The Hon'ble Saugata Bhattacharyya, J. was pleased to discuss the effect of observation of the Apex Court in **Hamid Ali Khan** (supra) and observed:-

“It is an established principle that judgment is an authority on what it decides and not what can be deduced therefrom. In the present case the act of invoking section 17(4) of the said Act of 1894 on the ground of urgency has not been questioned in the writ petition when the same was instituted in 2011. Subsequently, on affirming supplementary affidavit ten years thereafter on 14th December, 2021 faint attempt has been made to question the acquisition proceeding. Meanwhile, the entire process of acquisition stood complete on taking possession of the land on 27th July, 2001. In view of these facts section 48(1) comes into play wherein it has been provided the government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken. In the present case since the possession was taken far back on 27th July, 2001 the exercise of examining the issue whether urgency as contemplated under section 17 existed or not, as prayed for by the petitioner, appears to be impermissible. In this regard reliance is placed on paragraph 128 and 129 onwards of **Indore Development Authority (Supra)**.”

24. Same is the factual circumstances in the instant case. In the instant writ petition, acquisition proceeding was challenged for non-compliance of Section 9(3) and Section 9(4) of the Act 1, 1894. The petitioners also pleaded that the LA Collector did not consider the requirement of Section 23 of the Act in determining the amount of compensation to be awarded to the petitioners. No challenge is however made that the case of urgency has not been pleaded in the notice under Section 4 read with Section 17 of the Act. In the absence of pleading to this effect, this Court is not in a position to take into consideration the argument in this regard advanced by the learned Counsels for the petitioners.

25. Section 17 of the Land Acquisition Act of 1894 provides for the special powers in cases of urgency. It is the submission of the learned Advocate for the petitioner that the respondents before acquisition proceeding failed to make out any case of urgency and the notice under Section 9 of Act 1 of 1894 does not postulate any ground of urgency for which the land of the petitioners were acquired. Therefore, the acquisition is bad in law as no material was placed by the State Government as to why provision of Section 5A were dispensed with.

26. In the instant case, it is on record that the letter of the requisitioning authority clearly states that the Ministry-in-Charge was of the opinion that the lands in Mouza Tarulia ought to be acquired urgently for construction of Rajarhat-New Town Satellite Township Project. This ground was considered as the ground of urgency to apply Section 17 in

the instant case. Therefore, there was no illegality in invoking Section 17 of the Act. It is not in dispute that in the instant case acquisition proceeding was complete, award has been made and possession of the case land was delivered to the HIDCO by the Collector of North 24 Parganas. In **Aflatoon & Ors. vs. Lt. Governor of Delhi & Ors.** reported in **(1975) 4 SCC 285**, it was observed in paragraph 9 that:

“9. Assuming for the moment that the public purpose was not sufficiently specified in the notification, did the appellants make a grievance of it at the appropriate time? If the appellants had really been prejudiced by the non-specification of the public purpose for which the plots in which they were interested were needed, they should have taken steps to have the notification quashed on that ground within a reasonable time. They did not move in the matter even after the declaration under Section 6 was published in 1966. They approached the High Court with their writ petitions only in 1970 when the notices under Section 9 were issued to them. In the concluding portion of the judgment in *Munshi Singh & Others v. Union of India* (supra), it was observed [SCC P.344, para 10].

27. Again paragraph 11 it is stated as follows:-

“11. Nor do we think that the petitioners in the writ petitions should be allowed to raise this plea in view of their conduct in not challenging the validity of the, notification even after the publication of the declaration under s. 6 in 1966. Of the two writ petitions, one is filed by one of the appellants. There was apparently no reason why the writ petitioners should have waited till 1972 to come to this Court for challenging the validity of the notification issued in 1959 on the ground that the particulars of the, public purpose were not specified. A valid notification under s. 4 is a sine qua non for initiation of proceedings for acquisition of property. To have sat on the fence and allowed the

Government to complete the, acquisition proceedings on the basis that the notification under Section 4 and the declaration under Section 6 were valid and then to attack the notification on grounds which were available to them at the time when the notification was published would be, putting a premium on dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioners (see *Tilokchand Motichand v. H. B. Munshi and Rabindranath Bose v. Union of India.*)”

28. In view of the aforesaid decision of the Hon’ble Supreme Court this Court is of the opinion that the acquisition proceeding cannot be questioned at this stage after a long lapse of delay especially when the possession of land was taken and it was developed.

29. Learned Advocate for the petitioner submits that the land in question has not been developed by Rajarhat-New Town Satellite Township and on this ground the acquisition proceeding may be quashed. Development of township commences with laying of metal road, electrical poles, construction of advance sewerage line etc. It is submitted by the learned Advocate for the WB HIDCO that all such developments were made place in respect of the land in question. As the instant writ petition is pending, the WB HIDCO could not distribute the said piece of land by bifurcation of plots and naturally bushes and shrubs have grown over the said land. Some motor vehicles are kept also on the said land by some persons finding the land vacant. This does not mean that necessary development has not been made in respect of the said land.

30. It is vehemently urged by the learned Advocate for the petitioner that the award was not paid to the person interested on the land. They were not served with any notice under Section (9) of the said Act. Therefore, the award was calculated unilaterally and after eight years of acquisition the compensation was deposited in court under Section 31 of the Act 1 of 1894.

31. Sub-Section 9(1) of Act 1 of 1894 states:-

“The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.”

32. Sub-Section (3) and (4) of Section 9 speaks of service of notice personally on the occupier and any person so interested who resides elsewhere by post in a letter addressed to him at his last known residence, address or place of business registered under Sections 28 and 29 of the Indian Post Office Act, 1898. It is contended on behalf of the petitioner that no personal notice was served upon the petitioner. It is not in dispute that notice was served under the provisions of Section 9(1) of Act 1 of 1894. When notice was so served on the land, it is found from the averment made by the petitioner that they started agitation against the acquisition of land. This Court is not in a position to hold that the acquisition proceeding is bad for non-service of notice under Section 9(3), (4) of Act 1 of 1894.

33. For the reasons stated above I hold that that the acquisition proceeding was correctly initiated and concluded. Award was published and subsequently, the compensation has been forwarded to the court which to the petitioners were entitled.

34. For the reasons stated above, I do not find any reason to revive the acquisition proceeding under the provision of Section 24 of the Right of Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

35. In view of the above discussion, the instant petition is dismissed on contest, however there is no order as to cost.

(Bibek Chaudhuri, J.)