

Dd **6-8 22.08.2023**

MAT 1492 of 2023
with
I.A NO: CAN 1 of 2023
I.A NO: CAN 2 of 2023
With
MAT 1532 of 2023
with
I.A NO: CAN 1 of 2023
I.A NO: CAN 2 of 2023
with
MAT 1533 of 2023
with
I.A NO: CAN 1 of 2023
I.A NO: CAN 2 of 2023

The State of West Bengal & Ors.
Vs.
Based Mondal

Mr. Soumitra Bandyopadhyay,
Mr. Priyabrata Batabyal, Advocates
... .. For the State/appellants
Mr. Amit Kumar Pan,
Ms. Tanusri Santra, Advocates
... .. For the writ petitioner/respondent

- 1.** Three writ petitions were disposed of by a common judgment and order dated April 11, 2023 which are impugned herein.
- 2.** There are varying degree of delay in preferring the appeals being between 59 days and 64 days in these matters.
- 3.** Learned advocate for the writ petitioner/respondent in his usual fairness does not oppose the application for condonation of delay.
- 4.** For the ends of justice and on the basis of the pleadings in the applications for condonation of delay and in view of the concession granted by the

respondent, we deem it appropriate to condone the delay in preferring the three appeals.

5. I.A NO: CAN 1 of 2023 in connection with all the three appeals are **disposed of** accordingly.

6. By consent of the parties, the three appeals are taken up for hearing.

7. Learned advocate for the appellants draws the attention of the Court to the impugned judgment and order. He submits that, in view of the ratio of law laid down in **2022 SCC OnLine SC 1059 [Union of India & Anr. Vs. Subhash Chander Sehgal & Ors.]**, the impugned judgment and order cannot be upheld. He submits that, in view of the fact that there was no lapse in the acquisition proceedings, Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short the Act of 2013) is not attracted. Therefore, the directions contained in the impugned judgment and order so as to initiate proceedings under the Act of 2013 is uncalled for. He refers to the facts of the case. He submits that, at no stage, can it be said that, there was lapse of the acquisition proceedings undertaken under the Land Acquisition Act, 1894 (in short the Act of 1894).

8. Learned advocate appearing for the appellants submits that during the pendency of the appeals, the private respondent wrote a letter dated August 14, 2023 offering to sell the properties concerned on direct purchase basis.

9. Learned advocate appearing for the private respondent submits that, the land in question was initially sought to be acquired under the provisions of the West Bengal Land Development and Planning Act, 1948 (in short the Act of 1948). Proceedings

thereunder lapsed without payment of any compensation to the private respondent. Thereafter, proceedings under the Land Reforms Act, 1848 were undertaken. Proceedings under Section 4 were issued in April 2003. The declaration was published on August 13, 2003. No award was passed. Therefore, the proceedings under the Act of 1994 stood lapsed on August 13, 2005 in view of Section 11A of the Act of 1894.

10. Learned advocate for the respondents relies on **(2022) 2 SCC 772 [Executive Engineer, Gosikhurd Project Ambadi, Bhandara, Maharashtra Vidarbha Irrigation Development Corporation]** and submits that, Section 24(1)(a) of the Act of 2013 would apply only if the period for making the award did not end as on January 1, 2014, being the date when the Act of 2013 came into operation. In the facts and circumstances of the present case, since the time to make and publish the award under the Act of 1994 expired on August 13, 2005, the question of the proceedings under the Act of 1894 being saved under Section 24 of the Act of 2013 is not available. He submits that State authorities are still in possession of the land belonging to the private respondent. Therefore, the learned Judge was correct in directing the authorities to invoke the Act of 2013 for acquiring the properties.

11. Various plots of land are involved. Three writ petitions were filed before Court assailing the acquisition proceedings.

12. It appears from the records that, for the purpose of settlement of immigrants, State of West Bengal initiated proceedings under the Act of 1948 in respect of the plots involved in the three appeals. A

declaration under Section 6 of the Act of 1948 was made on February 23, 1956 in the gazette. On April 17, 1956, possession of the plots were taken over by the Collector and handed over to the Refugee Rehabilitation Department. Apparently, the land was used by the State. However, no award was passed under the provisions of the Act of 1948 in respect of such acquisition proceedings initiated thereunder.

13. State, thereafter, treated the proceedings under the Act of 1948 as lapsed. State initiated fresh proceedings in respect of the land in question under the provisions of the Land Acquisition Act, 1894. Notification under Section 4 of the Act of 1894 was issued in April 2003, declaration under Section 6 of the Act of 1894 was published on August 13, 2003. Again, no award was passed within the stipulated period of two years from the date of the declaration under Section 6 of the Act of 1894. Time to make the award in terms of Act of 1894 under Section 11A thereof, expired on August 13, 2005.

14. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 came into effect from January 1, 2014.

15. Section 24 of the Act of 2013 is 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."

16. Maharashtra Vidarbha Irrigation Development Corporation (supra) considered Clause (a) to Section 24(1) of the Act of 2013 and observed as follows :-

"... .. In the context of clause (a) to Section 24(1) of the 2013 Act, it is to be stated that the said clause would apply only if the period for making of an award had not ended and time was available as on 1-1-2014. Where and if the period for making of the award had already lapsed before 1-1-2014, clause (a) to Section 24(1) would not apply so as to deprive and deny the vested rights which have already accrued in favour of the landowners. The present case is not of divesting of vested rights of the landowners on enactment of the 2013 Act."

17. Therefore, on the basis of the ratio laid down in **Maharashtra Vidarbha Irrigation Development Corporation** (supra) in the facts and circumstances of the present case, the authorities cannot invoke Section

24 of the Act of 2013 to complete the acquisition proceedings initiated under the Act of 1894.

18. Subhash Chander Sehgal (supra) was rendered on different facts and circumstances of the case and the ratio therein does not assist the appellants. In the facts of that case, it was held that there was no lapse of the acquisition proceedings under the Act of 1894.

19. In such circumstances, we find no ground to interfere with the impugned judgment and order.

20. MAT 1492 of 2023, MAT 1532 of 2023 and MAT 1533 of 2023 along with stay applications being CAN 2 of 2023 in connection thereto are **disposed of** without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)