

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

MAT 1813 of 2023

With

IA NO.: CAN 1 of 2023

**The Chief Executive Officer,
Kolkata Metropolitan Development Authority & Ors.**

Vs.

Jharna Bose & Ors.

For the Appellants

:Mr. Kishore Dutta,

Ld. Sr. Advocate

Mr. Satyajit Talukdar

For the writ petitioners/

Respondents

: Mr. Amit Kumar Pan

Mr. Ram Chandra Guchhait

For the State

: Mr. Lalit Mohan Mahato, Ld. AGP

Mr. Zia ul Haque

Heard & Judgment on

: December 14, 2023

DEBANGSU BASAK, J.:-

1. The appeal is directed against a Judgment and order dated August 14, 2023 passed in WPA 3178 (W) of 2016.
2. By the impugned Judgment and order, the learned Single Judge held that the acquisition notice under Section 4(1a) of the West Bengal Land (Requisition and Acquisition) Act, 1948. The learned Judge held that since the notice is treated to be lapsed for non-payment of compensation and since the land was acquired for construction of Rash Behari Connector and since the structure constructed by the predecessor-in-interest of the writ petitioners were completely demolished and the land used for public purpose, the writ petitioners were found to be entitled to compensation under the provisions of the Right to Fair Compensation Act, 2013. The learned Single Judge observed that since the Act of 2013 contains specific provision of rehabilitation, the Court refrains from passing further order in respect of rehabilitation.
3. Learned Senior Advocate appearing for the appellants submits that, the learned Single Judge failed to take into account the fact that the acquisition proceedings were initiated under the

Act of 1948. The possession was taken on January 14, 1989. Award was passed on May 8, 2002. 80 per cent of the compensation was paid on April 18, 1987 including to the writ petitioners. Only one person did not receive compensation since he was missing at that material point of time. He points out that 80 per cent of the structure value was paid on February 16, 1987. The appellants called up the writ petitioners to file an affidavit with regard to the missing person which the writ petitioners did on February 13, 1989. Thereafter, no further steps were taken. The writ petitioners made representation dated June 30, 2011 and approached the High Court by way of the writ petition in which the impugned order was passed. He points out that the writ petition was filed in 2016. There is an issue of unexplained delay involved. Apart from the issue of delay, the learned Senior Advocate appearing for the appellants submits that, the facts of the case are governed by the ratio of the decision of the Hon'ble Supreme Court reported at **2020(8) Supreme Court Cases 129 (Indore Development Authority vs. Manoharlal &**

Others). He refers to paragraphs 366.7, 366.8 and 366.9 thereof in this regard.

4. Learned Senior Advocate appearing for the appellants submits that there does not exist any legal right on the part of any of the writ petitioners to receive alternative accommodation. Consequently, he submits that the impugned Judgment and order should be set aside.
5. State and the writ petitioners are represented.
6. We find from the records that, the writ petition was filed by five petitioners. The first writ petitioner expired on July 5, 2022. The impugned Judgment and order was passed on August 14, 2023. There is a subsequent order of the learned Single Judge dated August 23, 2023 which notes the death of the writ petitioner no.1. The learned Single Judge proceeded to direct the writ petitioner no.1 to be described as “Banani Mistri (dead) represented by L.R.s and others versus the State of West Bengal and Others.”
7. All the heirs and legal representatives of the deceased writ petitioner no.1 was on record. Therefore, all that was required was to delete the name of the writ petitioner no.1 after

recording her death. The direction contained in the order dated August 23, 2023 cannot be sustained. By reason of such direction, the present appeal was filed in the manner as appearing in the memo of appeal today.

8. Learned Advocate appearing for the appellants is granted liberty to correct the cause title of the memo of appeal.
9. Adverting to the merits of the case, we find that, proceedings under the Act of 1948 were initiated. Possession of the subject land was taken on January 14, 1989. There is an award dated May 8, 2002. The surviving writ petitioners received 80 per cent of award as the compensation on April 18, 1987.
10. The writ petitioners approached the Writ Court with primarily twofold prayers. The first prayer was for release of the balance amount of compensation and the second prayer was for alternative accommodation.
11. The factual matrix as noted above attracts the ratio of ***Indore Development Authority (supra)***. The Hon'ble Supreme Court held as follows:

“366.7. The mode of taking possession under the 1894 Act and as contemplated under Section 24(2) is by drawing of inquest report/memorandum. Once award has been passed on taking possession under Section 16 of the 1894 Act, the land vests in State there is no divesting provided under Section 24(2) of the 2013 Act, as once possession has been taken there is no lapse under Section 24(2).

366.8. The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the 2013 Act came into force, in a proceeding for land acquisition pending with the authority concerned as on 1-1-2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.

366.9. Section 24(2) of the 2013 Act does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the 2013 Act i.e. 1-1-2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition.”

12. As noted above, possession of the land was taken and an award in respect of the land in question acquired was made. Possession of the land was taken on January 14, 1989 and the award was published on May 8, 2002. With these two incidents happening, the land stood vested in the State. There is no provision for divesting under the Act, 1948. **Indore Development Authority (supra)** notices such fact also. Compensation *albeit* 80 per cent was paid. Therefore, on the

strength of the ***Indore Development Authority (supra)***, the land stood vested with the State. Consequently, no directions could be passed as done by the impugned Judgment and order.

13. However, we hasten to add that, the writ petitioners are entitled to the balance amount of compensation in accordance with law.

14. It is the contention of the writ petitioners that, the award was not valid since the notice stood lapsed. In support of such contention, reliance is placed on ***2011(3)CHN (CAL) 555 (State of West Bengal vs. Sabita Mondal)***.

15. With respect, we are unable to agree with the contention of the learned Advocate for the writ petitioners. The writ petitioners approached the Writ Court with a case for release of the balance compensation amount. Therefore, they accepted that there was a valid award and that a large portion of the compensation was received by them. It would be inappropriate to allow the writ petitioners after taking such stand before the learned Single Judge to canvas a stand one of

invalidity of the acquisition proceedings or the lapsing of the notice or non-existence of an award.

16. Existence of the award was accepted by the writ petitioners before the learned Single Judge as appearing from the first prayer made in the writ petition. They also wanted release of the balance amount of compensation.

17. In such circumstances, the impugned Judgment and order is set aside.

18. WPA 3178(W) of 2016 is dismissed. However, this Judgment and order will not prevent the writ petitioners from receiving the balance amount of the award, in accordance with law.

19. **MAT 1813 of 2023** along with **IA No.: CAN 1 of 2023** is disposed of accordingly.

(Debangsu Basak,J.)

20. I Agree.

(Md. Shabbar Rashidi, J.)