

Form J(2)

**IN THE HIGH COURT AT CALCUTTA**  
**Constitutional Writ Jurisdiction**  
**Appellate Side**

**Present :**  
**The Hon'ble Justice Bibek Chaudhuri**

**WPA No. 22476 of 2013**

**Afazuddin Biswas & Ors.**  
**Vs.**  
**State of West Bengal & Ors.**

**For the petitioner : Mr. Subrata Karmakar**

**Judgement on : 16.06.2023.**

**Bibek Chaudhuri, J.**

Indisputably, the petitioners were the raiyats in respect of plot nos. 141, 141/279 measuring areas of 58 decimal and 95 decimal respectively of Mouza – Chandpara within Police Station – Sagardighi. After the death of the original raiyat the present petitioners became the raiyats in respect of the aforesaid lands and their names were duly recorded in the LR record of rights. Subsequently by a proceeding under the Land Acquisition Act for construction of Sagardighi Thermal Power Project the LA Collector, Murshidabad acquired the above-mentioned two plots. It is also not in dispute that after acquisition compensation amount was settled and it was lying in the Treasury till date without disbursement on the ground that between the vendor of the predecessor-in-interest of the petitioners and the petitioners a Title Suit being Title Suit No. 3/2005 was pending. It is also stated by the petitioners that the said suit was

initially dismissed for default by the learned Civil Judge (Junior Division), 2<sup>nd</sup> Court at Jangipur vide order dated 5<sup>th</sup> July, 2005 and subsequently it was restored. Finally, the said suit was again dismissed for default on 12<sup>th</sup> September, 2007. Till date the said suit was not restored. Thus, it is an undisputed legal position with regard to the ownership of the property and status of the petitioners that the petitioners were owners before acquisition after the death of their father who was the recorded owner by purchase and right, if any, of the vendor of the petitioners over the subject property has extinguished in view of Section 3 of the Limitation Act.

When the instant writ petition was filed by the petitioners praying for disbursement of compensation amount the State respondents were directed to file a report in the form of affidavit. The State respondents filed a report in the form of affidavit admitting the case of the petitioners stated hereinabove. However, it is stated by the contesting State respondents that regarding disbursement of compensation amount they took an opinion of the learned Government Pleader of the district of Murshidabad who opined that since Title Suit No. 3/2005 was not disposed of on merit and the same was dismissed for default, the petitioners should not be granted compensation and secondly the matter should be referred under Section 30 of the Land Acquisition Act to the learned District Judge for decision. A written note of argument has also filed on the same line by the learned Advocate for the respondents. I have duly considered the said report in the form of affidavit and the written argument filed on behalf of the State respondents. I am astonished to see the opinion of the learned Government Pleader, Murshidabad because of the fact that Title Suit No. 3/2005 was finally dismissed for default on

12<sup>th</sup> September, 2007. Till date the plaintiff did not take any step for restoration of the said suit. Thus, the right of the petitioners over the property has been crystallized in view of Section 3 of the Limitation Act. It is not in dispute that the aforesaid property was acquired under Land Acquisition Act. The petitioners have not challenged the acquisition process. They only want compensation which has already been fixed and lying in the Treasury to be disbursed in favour of them.

Considering the facts and circumstances of this case and when the Land Acquisition Officer has already come to a decision that the petitioners are entitled to receive the compensation amount, but for Title Suit No. 3/2005, the instant writ petition is disposed of directing the respondent nos. 2 and 3 to disburse the compensation amount within 30 days from the date of communication of the order.

The instant writ petition is, thus, disposed of.

The petitioner is at liberty to act on the server copy of the order.

**(Bibek Chaudhuri, J.)**

**Srimanta, A.R.(Ct.)**  
**Item No. 16.**