

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

**W.P.A. 28121 of 2022
With
CAN No. 1 of 2023**

**Hasibur Rahaman Sardar
Vs.
The State of West Bengal & Ors.**

For the Petitioner:	Mr. Saktinath Mukherjee, Sr. Adv. Mr. Amit Kumar Pan, Adv, Syed Julfikar Ali, Adv, Mr. Shubrojoyoti Mookherjee, Adv.
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For the Respondent No. 11:	Mr. Saptangsu Basu, Adv, Mr. Arindam Guha, Adv, Mr. Jayanta Sengupta, Adv, Mrs. Arpita Dey, Adv.
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For the KMDA:	Mr. Kishore Dutta, Adv, Mr. Satyajit Talukder, Adv, Mrs. Piu Karmakar, Adv.
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For the State:	Mr. Susovan Sengupta, Adv.
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For the Respondent No. 13-15:	Mrs. Bishalaxmi Ghosh, Adv.
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Hearing Concluded on:	13.09.2023
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Date:	01.12.2023
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SUVRA GHOSH, J. :-

1. The petitioner seeks issuance of a formal order by the Collector, Howrah of derequisition of land measuring about 33.5 decimals in R.S. Dag No. 845 4 decimals in R.S. Dag No. 846 and 9 decimals in R.S. Dag No. 847 in R.S.

Khatian No. 178, mouza - Pakuria, J.L. No. 54, Salap-I Gram Panchayat
Police Station - Domjur, District - Howrah in favour of the petitioner.

2. The contention of the petitioner is as hereunder:-

The proforma respondents acquired title and possession in respect of the plots in question by virtue of purchase vide registered deeds executed in 1988. A vast area of land including the plots in question was requisitioned for West Howrah Area Development Project under the West Bengal Land (Requisition and Acquisition) Act, 1948 vide L.A. Case No. 27/1/AC/11 CMDA of 1984-85 and notification was published in the daily newspaper The Statesman on 6th August, 1998 by the Calcutta Metropolitan Development Authority presently known as the Kolkata Metropolitan Development Authority (hereinafter referred to as the KMDA) notifying preparation of the Outline Development Plan for the western part of Howrah prepared by the KMDA as per provisions of section 36(1) of the West Bengal Town and Country (Planning & Development) Act, 1979. The proforma respondents moved an application under Article 226 of the Constitution being C.O. No. 13775 (W) of 1994 inter-alia challenging the order of requisition. By an order passed on 29th April, 1997, this Court allowed the writ petition with an observation since there was no material either to show that there was an order for requisition of the land in question or the same was served upon the writ petitioners, possession, if any, taken by the respondent authorities without due process of law should stand set aside. The Court further recorded that

the aforesaid order would not prevent the respondent authorities from proceeding in accordance with provisions of law for the purpose of acquisition of the land in question.

3. By virtue of amendment of the Act of 1948, operation of the Act was extended till 31st March, 1997 and in view of section 3 of the Amendment Act of 1994, power under section 3 of the Act of 1948 was omitted with effect from 1st April, 1994. No further step was taken by the State respondents for initiation of fresh proceedings under the Land Acquisition Act, 1894 pursuant to the order of the Court.
4. In a writ petition being W.P. No. 3071 of 1988 filed by one Ram Chandra Jaiswal whose land was also requisitioned in connection with the same proceedings, a coordinate Bench of this Court, by an order passed on 15th February, 2001 directed the State respondents to release the land in question, the said order not being carried in appeal by the State. The proforma respondents filed an application before the KMDA as well as the State authorities to issue a formal order of release/de-requisition in respect of the plots in question pursuant to the order of the Court. The Deputy Secretary (L.A) CMDA, vide memo dated 2nd March, 2001 addressed to the Special Land Acquisition Officer, Howrah Improvement Trust directed the latter to de-requisition/relinquish all the land of the land owners requisitioned for the purpose of West Howrah Area Development Projects and prepared a list of the said land owners and forwarded the same to the Special Land Acquisition Officer, Howrah Improvement Trust for doing the needful.

5. The petitioner purchased the plots in question from the proforma respondents vide 3 registered deeds of sale executed on 1st April, 2022 and upon taking possession of the said plots, requested the Principal Secretary, Land & Land Reforms Department by a letter issued on 31st May, 2022 to issue formal order of de-requisition of the land in his favour. In a follow-up letter issued by the Additional District Magistrate and District Land & Land Reforms Officer to the CEO, KMDA on 30th August, 2022, the State authorities admitted that the land in question had to be released in favour of the writ petitioner, thereby acting upon the order of the Court.

6. Upon an attempt of some officers/agents of the Kolkata West International City Private Limited (for short 11th respondent) in August, 2022 to encroach upon the land for the purpose of raising boundary wall, the petitioner filed an application under section 144(2) of the Code of Criminal Procedure and a report submitted by the Inspector in Charge, Domjur Police Station in the said case upon causing local enquiry reveals that the KMDA has acquired the land in question and has granted 99 years lease of the land to the Kolkata West International City Private Limited.

7. It is submitted on behalf of the petitioner that in view of setting aside of the requisition by this Court, the State respondents could not have made over the land in favour of the KMDA and the lease executed by the KMDA in favour of the 11th respondent is void *ab initio*. The 11th respondent has in turn granted sub-lease of the land in favour of the Kona Logistics Park Private Limited, the 12th respondent herein, which is also illegal.

8. Learned counsel has further submitted that by a letter issued on 9th December, 2022, the Additional Secretary, Land & Land Reforms and Refugee Relief and Rehabilitation Department, Government of West Bengal informed the petitioner that the land was subsequently acquired and award declared in 2004. The award was deposited in the District Court in 2006 as the owner of the land could not be traced out and as such, acquisition was complete. The letter also recorded that the L.A. Collector was not in possession to return the land to the petitioner and necessary action should be taken for payment of compensation to the present owner who stepped into the shoes of the erstwhile owners/awardees. Also, if the land was not yet utilised for the required purpose and was originally an agricultural land of rural area, requiring department could consider the plots as surplus land and proceed to restore the same to the original owner in terms of the L.A. Manual.

9. The State attempted to salvage the acquisition proceedings by initiating further proceedings under the unamended provision of the Land Acquisition Act, 1894 but such proceeding was also quashed by this Court by a judgment passed on 25th September, 2008 in W.P. No. 654 of 2004 (M/s. Rungta Agencies Limited and Others v/s State of West Bengal and Others reported in A.P.O. No. 66 of 2009). The said judgment was affirmed by the Hon'ble Division Bench of this Court and Special Leave Petition preferred against the judgment of the Hon'ble Division Bench was dismissed. It was held by this Court that un-amended provisions of section 9(3) and 9(4) of the Act of 1894 could not be invoked without prior compliance with section 4

and 6 of the Act. In the matter of Rungta Agencies Private Limited, the State authorities admitted in the affidavit in opposition filed by them that L.A. Case No. 27/1/ACT-II/CMDA of 1984-85 relates to mouza Pakuria where the plots in question in the present writ petition are located. The order passed in C.O. No. 13775 (W) of 1994 also pertains to the said L.A. Case of 1984-85. The parent notification has ceased to exist in view of issuance of subsequent notices under unamended sections 9(3) and 9(4) of the 1894 Act. The said attempt was also quashed by this Court by the order passed on 25th September, 2008.

10. Since the petitioner purchased freehold land after quashing of both the acquisition proceedings by this Court by two separate orders, he cannot be termed as a post-vesting purchaser and the question of challenging the acquisition proceedings does not arise. The respondents have tried to impress upon the Court that the plots in question pertain to mouza-Salap and not under mouza Pakuria as appears from the letter dated 2nd March, 2001 issued by the Deputy Secretary, Land Acquisition, CMDA. But the other part of the letter clearly states that the plots in question are in mouza Pakuria.
11. Learned counsel has relied upon the authorities in Collector of Kamrup and Others v/s. Kamakhya Ram Barooah and Others reported in AIR 1965 SC 1301 and The State of West Bengal v/s. Sabita Mondal with State of West Bengal v/s. Sabitri Devi (Since deceased) with State of West Bengal v/s. Nur Islam with Samir Kumar Das v/s. State of West Bengal reported in 2011 (3) CHN (CAL) 555 in support of his contention.

12. Speaking for the State respondents, learned counsel has submitted that notices under section 3 and 4 (1a) of the Act of 1948 was issued by the respondents upon all concerned and the plots in question were vested in the State much prior to purchase of the same by the petitioner, the petitioner therefore being a post-vesting transferee having no right to challenge the acquisition proceedings. The plots were acquired vide L.A. Case No. 29/1(ACT-II) of 86-87 and are not related to L.A. Case No. 27/1/SE/II CMDA of 1984-85. Notice under sections 9(3) and 9(4) of the Act of 1894 was issued by the Collector and award declared under section 11 of the Act in favour of the respective awardees. The award money is lying with the P.L account of the Collector, Howrah. The vesting proceeding having been completed accordingly, the petitioner can only claim compensation upon substantiating his title in respect of the plots.
13. The State of West Bengal made over the plots in favour of the KMDA vide deed of conveyance dated 3rd November, 2004 which in turn, leased out some of the plots to the Kolkata West International City in 2012 for carrying out development work. Upon liberty granted by this Court while disposing of the writ application being C.O. No. 13775 (W) of 1994 to proceed in accordance with law for fresh acquisition of the plots in question, the State respondents proceeded with such acquisition afresh by invoking provisions of Act-II of 1894 and the process was complete upon declaration of award. Possession of the land was handed over to the KMDA and the erstwhile owners/proforma respondents were mere trespassers therein after the land was vested in the State. As such, the question of de-requisition of the land

does not arise. The order passed in C.O. 13775 (W) of 1994 is contrary to records and this Court, according to learned counsel, has inherent power to review the same. Also, the petitioners were not impleaded as parties in the said matter. In Rungta Agencies Private Limited, the plot numbers are different from that of the present case.

14. Learned counsel representing the KMDA has submitted at the very outset that inordinate delay in filing the writ petition has not been explained by the petitioner. Award was declared on 30th September, 2004 and the writ petition was filed on 16th December, 2022. On merits, learned counsel has submitted that the earlier order pertains to a different L.A. case and has no bearing with the plots involved in the L.A. case of 1986-87. The petitioner is a post-vesting transferee and has no right to challenge the legality or validity of the acquisition proceeding since the land was vested in the State much prior to purchase of the same by the petitioner. The KMDA has reiterated the submission made on behalf of the State respondents and has submitted that upon declaration of award on 30th September, 2004 in respect of 128 plots, 129 out of 311 awardees received compensation and the remaining compensation amount was sent to the L.A. Tribunal, Howrah.
15. The alleged vendors of the petitioner filed a writ petition earlier being W.P. No. 20128 (W) of 2003 before this Court for release of the plots involved in the present writ petition from requisition made in connection with L.A. Case No. 27 but failed to obtain any order in their favour. The said writ petition was ultimately dismissed for default on 26th April, 2016 and has not been restored as yet.

16. Learned counsel has placed reliance on the authorities in *Municipal Corporation of Greater Bombay v/s. Industrial Development Investment Co. Pvt. Ltd. and Others* reported in (1996) 11 Supreme Court Cases 501, *State of Orissa v/s. Dhobei Sethi and Another* reported in (1995) 5 Supreme Court Cases 583, *Star Wire (India) Limited v/s. State of Haryana and Others* reported in (1996) 11 Supreme Court Cases 698, *Delhi Development authority v/s. Damini Wadhwa and Others* reported in (2022) 10 Supreme Court Cases 519, and *Shiv Kumar and Another v/s. Union of India and Others* reported in (2019) 10 Supreme Court Cases 229 in support of his contention.

17. Supporting the contention of the other respondents, the 11th respondent has submitted that the writ petition demonstrates that the petitioner claims de-requisition of land in mouza Salap whereas land in mouza Pakuria was transferred to this respondent by the KMDA. The proforma respondents were the purported owners/interested parties in respect of plot nos. 845, 846 and 847 in Mouza Salap and not in respect of the subject plots in mouza Pakuria. The plots in question were acquired by virtue of L.A. Case No. 29 and notification therefor was published in the Calcutta Gazette bearing no. 9252/L.A. (II)/IG-29/89 dated 4th February, 1989. De-requisition process, if at all, was initiated by the Government in respect of the plots in mouza Salap and not mouza Pakuria. The land has been utilised by this respondent who is not in a position to return the same. At best, fresh acquisition proceedings may be initiated in respect of the said plots.

18. I have considered the rival contention of the parties, material on record and the relevant laws.
19. It transpires on perusal of the material on record that the earlier writ petition being C.O. No. 13775 (W) of 1994 was filed by the predecessor in interest of the petitioner, being the proforma respondents in the present writ petition challenging the legality of the notice of requisition in L.A. Case No. 27/1/SE/II CMDA of 1984-85. Several plots of land in mouza Pakuria including plot nos. 845, 846 and 847 involved in the present writ petition were subject matter of the earlier writ petition. By an order passed on 29th April, 1997 in the said writ petition, this Court allowed the writ petition and set aside the possession, if any, taken by the respondent authorities therein without due process of law. The requisition was therefore set aside/quashed by the learned Court upon granting liberty to the respondent authorities to proceed in accordance with law for acquiring the land in question afresh. The said order remains unchallenged and holds the field till date.
20. In a letter issued to the KMDA on 30th August, 2022, the Additional District Magistrate and District Land & Land Reforms Officer, Howrah requested for information regarding execution of the lease deed by the KMDA in favour of Kolkata West International City Private Limited, despite communication made by the CMDA regarding de-requisition of the subject plots. The letter refers to the order dated 29th April, 1997 and states that despite the acquisition being set aside by the Court, the KMDA leased out the subject plots to the Kolkata West International City Private Limited. A letter issued by the Deputy Secretary (L.A.), CMDA, Special Land Acquisition Officer,

Howrah Improvement Trust, Howrah for release of the plots in question along with other plots records that the owners of plot nos. 845, 846 and 847 undertook not to claim any compensation or damages upon de-requisition/relinquishment of the plots in question. Though the letter states that the plot nos. 845 to 847 are in mouza Salap, the subject of the letter clearly depicts that release of land from West Howrah Area Development Project is in respect of mouzas Khalia, Tentulkuli and Pakuria. Therefore it can safely be held that the recording of the word Salap is a typographical mistake and the plots in question are situated in mouza Pakuria, moreso, since all other documents pertaining to the acquisition in question unanimously reveal that the plots in question are situated in mouza Pakuria. It is also not improbable that since mouza Pakuria is situated under Salap-I Gram Panchayat, the mouza has been mistakenly recorded as Salap instead of Pakuria.

21. It is relevant to refer to another letter issued by the Additional Secretary, Land & Land Reforms and Refugee Relief and Rehabilitation Department to the Additional District Magistrate (L.A.) on 9th December, 2022. The letter speaks in no uncertain terms that upon liberty granted to the State by this Court to initiate acquisition proceedings afresh vide order dated 29th April, 1997, the L.A. Collector proceeded with the acquisition and declared award in 2004. Surprisingly, the letters says that since in the present matter, no Court has held that the completed acquisition process in respect of the plot nos. 845, 846 and 847 in Pakuria Mouza was void and the land was to be returned, the L.A. Collector was not in position to return the land to the

petitioner. Besides suggesting payment of compensation to the petitioner, an alternative suggestion has also been made in the said letter to the effect that if the land was not yet utilised by the requiring body and was originally an agricultural land of the rural area, the appropriate department may consider relinquishment of the plots in favour of the original owner.

22. One thing is crystal clear from all these inter departmental communications made by the State authorities. The order passed by this Court in C.O. No. 13775 (W) of 1994 on 29th April, 1997 was not only accepted by the State authorities, but also acted upon by initiating acquisition proceeding afresh. The legal consequence of the said proceedings shall be dealt with later on. Therefore the State respondents are debarred from challenging the legality and validity of the order dated 29th April, 1997 in the present writ petition.
23. It is trite law that the effect of the Land Acquisition (West Bengal Amendment) Act, 1997 which came into operation on the midnight between March 31, 1997 and April 1, 1997 prevented all those notices under sub-section (1a) of section 4 issued after April 1, 1994 from being lapsed by giving scope of revival by way of a notice under sub-section (3B) of section 9 of the said Act if an award had not been passed within three years from the date of publication of such notice and which would otherwise lapse if the said Act of 1997 would not come into operation at the midnight of March 31, 1997.
24. In respect of those notices under sub-section (1a) of section 4 which were issued prior to March 31, 1992 and in respect of which no award had been passed by March 31, 1995, those notices had already lapsed and by the

Amendment Act, 1997, no provision has been made for revival of the lapsed notices which stood lapsed on March 31, 1997. Only the notices under section (1a) of section 4 which would have lapsed on the midnight of March 31, 1997 or on subsequent dates have been saved. [2011 (3) CHN (CAL) 555].

25. In the authority in *Collector of Kamrup and Others (supra)*, the Hon'ble Supreme Court has dealt with acquisition of land under section 4 of the Assam (Requisition and Acquisition) Act, 1948 which is akin to the West Bengal Land (Requisition and Acquisition) Act, 1948. The Hon'ble Court has observed that the power to acquire land under section 4 may be exercised where the land has been requisitioned under section 3 and not otherwise.
26. In the case in hand, the requisition under section 3 of the Act of 1948 was set aside by this Court by the order dated 29th April, 1997. The State respondents initiated fresh proceedings for acquisition in terms of liberty granted by the said order by invoking provisions of the Act of 1894 and award was declared in 2004. The notification bearing no. 9252-LA(II)/IG-29/89 dated 4th February, 1989 under section 4 (1a) of the Act of 1948 was published by the State in the Calcutta Gazette. In the earlier writ petition being W.P. No. 654 of 2004, M/s. Rungta Agencies challenged the notification dated 4th February, 1989 and sought release of the land situated in mouza Pakuria and Khalia on the ground that the acquisition proceeding was not completed within the stipulated time and no notice under section 9 (3B) of the Land Acquisition Act, 1894 was issued in respect of the said land. As such, the land was not acquired either under the provisions of the

Act of 1948, or the Act of 1894. The said notification also covers the land involved in the present writ petition. The said writ petition was allowed by an order passed on 25th September, 2008 declaring that the proceeding was not continued under the Land Acquisition Act, 1894 and the special notice issued in connection with the same was under the provisions of section 9 (3) and (4) of the Act of 1894 and not under section 9 (3B) of the Act. The Court held that the land was not acquired in accordance with law and directed release of the land in favour of the petitioners therein within three months from the date of communication of the order. Therefore the notification no. 9252 in connection with L.A. Case No. 29 was set aside/quashed by the Court by its order dated 25th September, 2008. The said order was carried in appeal before the Hon'ble Division Bench which, by an order passed in APO No. 66 of 2009 and APO No. 67 of 2009 on 21st February, 2013 affirmed the same with an observation that notice under section 9 (3B) was never given. The State was granted liberty to take necessary steps for acquisition of the land in accordance with law within the period of five weeks from the date of order. The KMDA preferred Special Leave to Appeal against the said order before the Hon'ble Supreme Court which was not entertained. The Hon'ble Supreme Court also granted similar liberty to the authority as granted by the Hon'ble Division Bench.

27. It has been admitted by the respondents that upon quashing of the earlier L.A. Case being no. 27 by this Court, a fresh L.A. proceeding being no. 29 was initiated by notification no. 9252. The respondents have strenuously argued that the plots involved in the present writ petition have been

acquired vide L.A. Case no. 29 and has no bearing with L.A. Case no. 27. Record reveals that the plots in question were included in L.A. Case No. 27 which was set aside by this Court by the order dated 29th April, 1997. The said plots of land were also included in the notification no. 9252 in respect of L.A. Case No. 29. Since the said notification was quashed/set aside by this Court by the order dated 25th September, 2008, any subsequent step taken by the State respondents in connection with the said L.A. proceedings including grant of lease in respect of the land in favour of the KMDA, subsequent leases in favour of the 11 & 12th respondents respectively and making over possession in their favour are void *ab-initio*.

28. Therefore it is crystal clear that upon quashing of the notification no. 9252, the plots in question became freehold land. Though liberty was given to the State respondents to acquire the land in accordance with law, no fresh acquisition proceedings appears to have been initiated by the State thereafter.
29. It is contended on behalf of the respondents that the inordinate delay in filing the writ petition has not been explained by the petitioner. Also, the petitioner being the post-vesting transferee has no right to challenge the acquisition proceedings.
30. It is to be borne in mind that the petitioner has not challenged the acquisition proceedings in the present case and has sought issuance of a formal order of de-requisition in terms of the earlier orders passed by this Court. The petitioner purchased freehold property vide registered deeds executed on 1st April, 2022, i.e., after both the acquisition proceedings were

set aside by this Court. The plots in question not being vested when the petitioner purchased the same, he cannot be termed as a post-vesting transferee with regard to the said plots. Therefore the ratio decidendi laid down in the authorities in Delhi Development Authority (supra) and Shiv Kumar and Another (supra) can be distinguished from the fact situation of the present case. Immediately upon purchase of the plots in question, the petitioner approached the Principal Secretary, Land and Land Reforms Department, Government of West Bengal (L.A. Branch) vide letter dated 31st, May, 2022, requesting issuance of formal order of de-requisition pursuant to the decision taken by the Government of West Bengal vide memo no. 116/LATS-14(PT), 2001 issued by the Deputy Secretary, (L.A.), CMDA to the Special Land Acquisition Officer, Howrah Improvement Trust, Howrah. Possession of the petitioner was allegedly disturbed by the officers and agents of the 11th respondent sometime in August, 2022 for which the petitioner filed an application under section 144(2) of the Code of Criminal Procedure which was registered as M.P. Case No. 771 of 2022. The writ petition has been filed on 16th December, 2022. Therefore no delay or laches on the part of the petitioner in filing the writ petition has been made out since the petitioner acquired right, title and interest in respect of the plots in question being free-hold property only in April, 2022 and not prior thereto. The authorities relied upon by the KMDA in Starwire India Pvt. Limited (supra), State of Odisha (supra) and Municipal Corporation of Greater Bombay (supra) have no manner of application in the present case.

31. Since the petitioner has prayed for issuance of a formal order of derequisition in respect of the plots in question by the 7th respondent in view of the fact that both the acquisition proceedings in respect of the plots in question were set aside by this Court earlier and the petitioner has acquired right, title, interest and possession in respect of the same by virtue of purchase, the writ petition succeeds. Land of other owners similarly circumstanced and involved in the same acquisition proceedings has been de-requisitioned/released by the State respondents in their favour and the petitioner is entitled to the same relief.
32. In the light of the observation made hereinabove, the writ petition is allowed.
33. The connected application being C.A.N. 1 of 2023 is also disposed of.
34. The Collector under Act-I of 1894, Howrah, being the 7th respondent herein, is directed to issue formal order of de-requisition in respect of the plots in question in favour of the petitioner within two months from the date of communication of this judgment.
35. However, the State respondents are at liberty to initiate fresh acquisition proceedings in respect of the plots within the aforementioned time frame, in accordance with law.
36. There shall however be no order as to costs.
37. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities

(Suvra Ghosh, J)