

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 27306 of 2014
CAN 2 of 2022
CAN 3 of 2022
Basanti Sen & Ors.
Versus
The State of West Bengal & Ors.

For the petitioner	:	Mr. Debayan Bera Mr. Sakti Prasad ChakrabartiAdvocates
For the State	:	Mr. Lalit Mohan Mahata Mr. Prasanta Behari MahataAdvocates
Amicus Curiae	:	Mr. Amit Kumar PanAdvocate

Heard lastly on : 11.04.2023

Judgment on : 07.07.2023

Jay Sengupta, J.:

1. This is an application under Article 226 of the Constitution of India praying for direction upon the respondents to complete the acquisition by initiating a proceeding under the provisions of the Right to Fair and Compensation and Transparency in Land Acquisition, Rehabilitation and Settlement Act, 2013 and to pay compensation money to the petitioners in

respect of lands recorded in R.S. plot nos. 591/521 and 522 of Mouza Nonadanga, J.L. 10, Police Station Yadavpur (now Tiljala) within the District of South 24 Paraganas according to share in land that were sought to be acquired through LA-II/18 of 1967-68.

2. Mr. Bera, learned senior counsel appearing on behalf of the petitioners, submitted as follows. In 1968-69 the Government initiated a proceeding for acquisition of various plots of lands of Mouza – Nonadanga and Laskarhat, Police Station Tiljala, District – 24 Parganas, which included amongst others R.S. Plot No. 591, 521 and 522 of Mouza: Nonadanga for the purpose of construction of link channel connecting the Corporation Drain with the Tollygunge Panchanangram Basin Drainage Scheme under West Bengal Act II of 1948. The acquisition proceeding was registered as Case No. LA-II/156 of 1967-68. On 18.11.1969, possession was taken under Section 3 of the West Bengal Act II of 1948 and the same was delivered to the Requiring Body, the Irrigation Department. A notification under Section 4 (1a) of West Bengal Act, II of 1948 was published in the Official Gazette on 23.05.1975. But, no award was declared as per provision of West Bengal Act II of 1948 on the basis of the said notification. On 31.03.1997, life of West Bengal Act II of 1948 expired. On the expiry, the entire proceeding stood lapsed by operation of law. The requisition expired on the midnight of 31.03.1997 and so also the notice under Section 4(1a) stood lapsed. So, the property was divested and the ownership reverted back to the land owners. A notice under Section 9(3B) of the Land Acquisition Act, 1894 was issued on 15.11.2002 for the purpose of assessment of compensation as per

provisions of the Land Acquisition (West Bengal Amendment) Act, 1997. No award was declared on the basis of the said notice under Section 9(3B) within two years from the date of notice. The notice stood lapsed by operation of law. Eventually no award was declared under Land Acquisition (West Bengal Amendment) Act, 1997 till 01.01.2014. The effect of the West Bengal Act 25 of 1996 was that all the cases of acquisitions which were initiated under the provisions of Act II of 1948, the notifications under Section 4 (1a) of the said Act of 1948 would lapse if the awards were not declared within the time fixed by Amendment Act of 1996 and accordingly, the question of revival and/or giving life to the lapsed notifications published under Section 4(1a) of the said Act II of 1948 did not arise. Further, admittedly the West Bengal Act of 1948 was a temporary statute. The temporary statute is effaced from the statute book on the expiry of its period. The West Bengal Act II of 1948 expired on 31.03.1997. The purpose of enacting the said Amendment Act, 1997 was to complete the requisition and acquisition proceedings which were initiated under the West Bengal Land (Requisition and Acquisition) Act, 1948, but could not be completed by publishing award within 31st day of March 1997. The first proviso to Section 9(3B) could not be reconciled with Section 7A of the Act. Challenging the vires of the first proviso to sub-section 9(3B) of the Land Acquisition Act as amended by the Land Acquisition (West Bengal Amendment) Act, 1997, a writ petition being WP No. 17107 (W) of 2000 (Sabitri Devi and Others Vs. State of West Bengal) was filed in this Hon'ble Court whereupon the Hon'ble Single Judge, by judgment and order dated 24th December, 2001, was

pleased to hold that in cases where the notices under Section 4(1a) of the 1948 Act stood lapsed on 31st March 1997, the provision of Section 9(3B) of amended 1894 Act would not be attracted and it would be only attracted only in cases, where the notices under Section 4(1a) of 1948 Act survived on 31st March, 1997 and in all other cases, Section 9(3A) of 1894 Act would apply. The judgment was reported in 2002 Vol. III CHN 108. Challenging the judgment and order dated 24th December, 2001 passed in W.P. No. 17107 (W) of 2000 (Sabitri Devi and Others Vs. State of West Bengal), the State of West Bengal preferred an appeal in this Hon'ble Court which was registered as F.M.A. No. 798 of 2008. Other appeals being F.M.A. No. 486 of 2007, F.M.A. No. 41 of 2008 were also filed. The above appeal being F.M.A. No. 798 of 2008 along with other appeals were disposed of by the Hon'ble Special Bench. By the judgment and order dated 17th June, 2011, the appeals filed by the State were dismissed. Special Leave Petitions were filed by the State of West Bengal & others challenging the judgment and order dated 17th June, 2011 passed by the Hon'ble Special Bench, High Court, Calcutta. The said Special Leave Petitions were tagged with Special Leave Petition being Civil Appeal No(s). 7087/2015 (State of West Bengal Vs. Lakshmi Rani Pan) for hearing. The above civil appeal was heard by the Hon'ble Supreme Court along with other appeals and by a common judgment and order dated 30th November, 2017 all the Civil Appeals were dismissed with certain directions. So, there was no scope to agitate once again that the vesting under Section 4(1a) of 1948 Act continued even after lapsing of the notices. The validation of the lapsed notices issued under

Section 4(1a) of 1948 Act on the basis of the said Validation Act was considered by the Hon'ble Division Bench of this Hon'ble Court in the case of Mandodari Bhakat Vs. State of West Bengal reported in 2013 (1) CHN (Cal) 444. There was no question of validating any lapsed proceeding under Section 7A of Act II of 1948 and by no imagination the 2011 Act having its retrospective commencement from 1st April, 1997 could be said to have revived and validated an acquisition which had lapsed on or before 31st March, 1997 by operation of Section 7A of Act II of 1948. In view of the lapsing of the acquisition proceeding under Section 7A of Act II of 1948, the title of the original owner revived. Special Leave Petitions were filed by the State of West Bengal & others challenging the judgment and order dated 17th October, 2012 passed by the Hon'ble Division Bench, High Court, in the case of Mandodari Bhakat. All those Special Leave Petitions were heard and were dismissed by a common judgment and order dated 9th March, 2018 by the Hon'ble Supreme Court. It was further observed that it would be open for the State or for the Acquiring Authority to take steps under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013. In the case of Mahadeb Khan & Ors. Vs. State of West Bengal & Ors. (W.P. No. 6705(W) of 2018) and by judgment and order dated 5th September, 2018 the writ petition was allowed upholding the points of law as decided by this Hon'ble Court with further direction that steps were to be taken under the provisions of the Act of 2013, to complete the acquisition proceeding and to pay compensation in accordance with the provisions of the said Act. It is for

the inaction on the part of State authorities (Respondents) that the proceeding for acquisition was not completed by declaring an award and paying compensation to the petitioners. The proceeding for acquisition which was initiated in the year 1968-69 remained pending for several years and till today no award was declared. So, the State could not shift its responsibility upon the petitioners. The decision of the Hon'ble Supreme Court in the case of Ramchand & Ors. Vs. Union of India reported in (1994) 1 SCC 44 was relevant. Reliance was placed on the decision in the case of Tukaram Kana Joshi & Ors. Vs. Maharashtra Industrial Development Corporation & Ors. reported in (2013) 1 SCC 353, the decision in the case of Vidya Devi Vs. State of Himachal Pradesh & Ors. reported in AIR Online 2020 SC 19. For initiating fresh proceeding for acquisitions in respect of the lands covered by Act II of 1948, as discussed above only Sections 11, 12, 13, 14, 15, 19 (5), 19 (6), 19(7), 20 to 23 and 26 to 30 were attracted. Section 24 had no application in respect of lapsed cases either under the Act I of 1894 or under the Act of 1948. Section 24(1) (a) applied in respect of pending proceedings initiated under the 1894 Act and which were pending on the date of commencement of the Act. i.e. as on 01.01.2014. It had no application in respect of proceeding which stood lapsed by operation of law on or before 01.01.2014. In all cases where notifications under Section 4 of 1894 Act were published more than 3 years before 01.01.2014 the proceeding would lapse if no award were published under 1894 Act and in those cases 24(1) (a) had no manner application. In such lapsed cases fresh proceeding under the 2013 Act were to be initiated. However, if awards were

published in these cases, Section 24 (1) (b) would be attracted. Reliance was placed on -

- (i) (2020) 8 SCC 129 (Indore Development Authority vs. Manoharlal);
- (ii) (2020) 2 SCC 772 (Executive Engineer, Gosikhurd vs. Mahesh & Ors.;
- and (iii) Unreported case of Supreme Court Haryana State Industrial & Infrastructure Development Corporation Ltd. Vs. Mr. Deepak Agarwal & Ors., decided on 28.07.2022.

3. Mr. Mahata, learned senior counsel representing the State, submitted as follows. One Basanti Sen and two others were the owners in respect of plot nos. 521, 522 and 599 of Mouza: Nonadanga, J.L. No. 10, P.S. Jadavpur, District: South 24 Parganas. The said land was requisitioned in LA-II/16 of 1968-69. The requisition was made over for 3.795 acres by the A.D.M. (General) on 12.06,1969 and on scrutiny it appeared that 0.99 acres of land had already been overlapped in the Land Acquisition Case No. LA-55 of 1954-55. Hence, 0.99 acres of land had been deducted from the instant case and the said erratum was published in the Calcutta Gazette on 04.07.1980 and the actual area of a scheme became 2.805 acres. The Land Acquisition Proceeding could not be made complete by passing Award and making payment of compensation within 31.03.1997. The acquisition proceeding was switched over by issuance of notice under Section 9 (3B) on 05.11.2002 and all the interest parties were present before the hearing on 26.11.2002. However, Award could not be published and compensation could not be paid to the land owners. The writ petitioner came forward before this Hon'ble Court after a lapse of 45 years and the petitioners being

the legal heirs of the original owners approached before this Hon'ble Court without explanation of delay and as such, the writ petition was not maintainable. The petitioners submitted and relied upon the decision reported in 2002 Volume 3 CHN page 108 that instead of 9(3B), 9(3A) would apply. Submission was also advanced on behalf of the petitioners relying upon the decision reported in 2011 Volume-III CHN (Cal) Page 555 that though the proceeding lapsed, but liberty was given to conclude the proceeding by issuing notice under Section 9(3A) of the Act. The main contention of the petitioners was that the present proceeding case stood lapsed twice and as such, the decision of the Supreme Court in Haryana State Industrial and Infrastructure Development Corporation Limited and Others Vs. Mr. Dipak Agarwal and Others would apply. There was no specific prayer in the writ petition that the compensation be assessed under the Act of 2013. In Swaika Properties (P) Ltd. Vs. State of Rajasthan the writ petition was filed after taking possession and the award had become final. The writ petition was dismissed on the ground of delay and laches. In Larsen & Toubro Ltd. Vs. State of Gujrat, in the absence of a challenge to the acquisition proceedings within a reasonable time, the challenge was repealed. Delay was also fatal in Haryana State Handloom & Handicrafts Corporation Ltd. Vs. Jain School Society. The writ petition was filed after two years to question the declaration under Section 6 and was dismissed on the ground of delay in Urban Improvement Trust Vs. Bheru Lal. A delay of 5 to 10 years was held to be fatal in questioning the acquisition proceedings as held in Vishwas Nagar Evacuees Plot Purchasers Assn. Vs. Delhi Admn.

Section 24 did not revive the right to challenge those proceedings which had been concluded. The legality of those judgments and orders could not be reopened or questioned under the guise of the provisions of Section 24(2). There was no lapse unless both conditions were fulfilled i.e., compensation had not been paid nor possession had been taken. In *U.P. Jal Nigam V. Jaswant Singh* it was held that if a claimant was aware of the violation of his rights and did not claim his remedies, such inaction or conduct tantamounted to a waiver of the right. In *Rabindranath Bose V. Union of India*, the Constitution Bench of Supreme Court observed that the Court could not go into stale demands after lapse of several years. In *Dharappa V. Bijapur Coop. Milk Producers Societies Union Ltd*, the Hon'ble Supreme Court observed that if delay had resulted in material evidence relevant to adjudication being lost or rendered unavailable, the same would be fatal. Though there was no limit to file a writ petition but it could not have been the intention that the high Prerogative Writ Jurisdiction would go into a demands after lapse of several years. Reference might be made to the decision reported in (2020) 8 SCC 129. In the case of *Tukaram Kana Joshi* there was pleading of ignorance of poor farmers, but such pleading was absent in this instant case. The decision in the case of *Vidya Devi Vs. State of Himachal Pradesh and others* reported in AIR Online 2020 SC 19 had no manner of application in this case as State did never claim adverse possession of the Requisitioned land in any manner. In the case of *Banda Development Authority Vs. Motilal Agarwal*, (2011) 5 SCC 394, it had been held that it was true that no limitation had been prescribed for filing a writ

petition under Article 226 of the Constitution of India, but one of the several rules of self imposed restraint evolved by superior courts was that the High Court would not entertain petitions filed after long lapse of time because that might adversely affect the settled/crystallised rights of the parties.

4. Mr. Pan, learned amicus assisting this Court, with his usual precision submitted as follows. At paragraph 11 of the writ petition the petitioners stated that since the notice stood lapsed, the LA Collector ought to have issued a notice under Section 9(3A) of the Act of 1894 for the purpose of assessment of compensation of the acquired land. But, a notice under Section 9(3B) was issued. In view of Section 7A, a notice under Section 9 (3B) could not have been issued. Section 24(1) of the Act of 2013 was applicable only when a notice was issued, but the award could not be made. Here, a notice under Section 9(3B) was issued on 07.11.2002. So, the entire proceedings stood lapsed. The writ petition was filed in 2014. Therefore, a new proceeding ought to be initiated for granting compensation to the land losers.

5. In reply, it was submitted on behalf of the petitioner as follows. A notice under Section 9(3B) was again issued on 15.11.2002. Statutory period was 2 years from the date of issue to declare the award. But, no award was declared on the basis of notice under Section 9(3B) dated 15.11.2002 within 2 years from the date of issue of the notice. So, the said notice also stood lapsed. Therefore, it could be contended that date of issue of 9(3B) notice was the date of cause of action for moving the writ petition. So in this case, cause action survived till the compensation was paid to the

petitioners. The cause of action was continuing one. It was held by the Hon'ble Apex Court in the following cases that cause of action was continuing one - Tukaram Kana Joshi (supra); Vidya Devi (supra); Santosh Sharma Vs. Union of India & Ors., (2013) 15 SCC 563.

6. I heard learned counsels appearing on behalf of the parties and perused the writ petition, the affidavits and the written notes of submissions.

7. Admittedly, in 1968-69 the Government initiated a proceeding for acquisition proceeding for plots in question for construction of link channel to connect the Corporation drain with the Tollygunge Basin Drainage Scheme. An acquisition proceeding was registered as Case No. LA-II/156 of 1967-68 under the West Bengal Act II of 1948. On 18.11.1969 possession was taken under Section 3 of the said Act and the same was delivered to the requiring body being the Irrigation Department. A notification under Section 4 (1a) of the said Act was published in the official Gazette on 23.05.1975. But, no award was declared. The said Act lapsed. Therefore, the requisition expired on the midnight of 03.02.1937 and the notice under Section 4 (1a) stood lapsed. Subsequently, a notice under Section 9(3B) of the Land Acquisition Act, 1894 was issued on 15.11.2002. But, no award was declared even on the basis of such notice within two years from the date of notice. Therefore, such notice also stood lapsed. No award was declared till 01.01.2014 after which the new Act of 2013 came.

8. It is contended on behalf of the petitioners that a lapsed proceeding cannot be revived in view of the decisions in Sabitri Devi (supra) and

Mandodari Bhakat (supra), as affirmed till the Hon'ble Apex Court. Therefore, the respondent authorities have no option but to initiate a fresh proceeding under the new Act of 2013 and compensate the land losers. On the other hand, the prime contention of the State respondents seems to be that the petitioner approached this Court after a lapse of 45 years from the date of cause of action and as such, the writ petition was not maintainable. Reliance was placed on several decisions of the Hon'ble Apex Court in this regard.

9. It appears that first, a notice issued under Section 4 (1a) of the Act II of 1948 and published on 23.05.1975 lapsed. And then, the notice issued on 15.11.2002 under Section 9(3B) of the Act I of 1894 also stood lapsed, because no award could be published with the stipulated time from such notices. In fact, no award was published at all in this regard. Accordingly, compensation was also not paid to the land losers.

10. As the second notice was issued in the year 2002, the State respondents cannot claim that the delay of the petitioners in approaching this Court was of 45 years. By issuing a notice under Section 9(3B) of the Act of 1894, the respondents have themselves effectively waived the point of delay till such date. Delay, if any, therefore is of about 11 or 12 years.

11. Even if, for argument's sake, one does not consider this to be a case of continuous cause of action, the purported delay in approaching this Court may be favourably considered in the particular facts and circumstances of a case, especially for the facts that land was taken over by the respondent authorities and utilised without paying any compensation to the petitioners,

that too after two failed proceedings and for no fault of the present petitioners. The petitioners' challenge is now as regards compensation because the land cannot be returned. Moreover, the petitioners are the heirs of the original owners and not mere subsequent purchasers.

12. Although the State had not seriously challenged the contentions to the petitioner that the two proceedings had lapsed and had mainly banked on the question of delay, it may nevertheless be expedient to briefly deal with the question of lapsing of the two proceedings as well.

13. The relevant facts have already been delineated in great details. First, a notification under Section 4(1a), of the Act II of 1948 did not survive as no award was passed in time. Therefore, there was an attempt to revive the proceeding by issuing a notice under Section 9 (3B) of the Act I of 1894. Here also, no award was passed within a period of two years as required. Therefore, the said proceeding was also lapsed.

14. In this context it is germane to rely on what was laid down by this Court in *Sabitri Devi (supra)* and subsequently, upheld till the Hon'ble Supreme Court, that in cases where notice under Section 4(1a) of the 1948 Act stood lapsed on 31.03.1997, the provision of Section 9(3B) of the amended Act of 1894 would not be attracted and it would only be attracted in cases where notices under Section 4 (1a) survived on 31.03.1997 and in all other cases Section 9 (3A) would apply. Therefore, in the instant case there is no scope of agitating that the vesting under Section 4(1a) continued even after the lapsing of notices. The validation of lapsed notices issued under Section 4(1a) was considered by a Division Bench in *Mandodari*

Bhakat (supra). There was no question of validating a lapsed proceeding under Section 7A of the Act II of 1948.

15. Therefore, there is no other option for the respondents, but to initiate a fresh proceeding under the new Act of 2013 so that the respondents could be compensated as their land had been taken over without compensating them under the earlier acts.

16. In view of the above, the writ petition is disposed of by directing the respondent authorities to initiate a fresh proceeding under the new Act of 2013 and compensate the petitioners at the earliest, preferably within a period of twelve weeks from the date of communication of this order.

17. With these observations, the writ petition is disposed of.

18. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)