

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

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

**WPA 1040 of 2021
With
CAN 1 of 2021**

**Sri Manoj Kedia
Vs.
The State of West Bengal and Ors.**

**For the Petitioner : Mr. Ayan Banerjee
Ms. Debasree Dhamali
Mr. Deborshi Dhar**

**For SJDA : Mr. Raja Saha
Ms. Bedashruti Bose**

**For the State : Mr. Bikramaditya Ghosh
Mr. Pretom Das**

**Heard On : 7th February, 2023
Judgment On : 10th February, 2023.**

Bibek Chaudhuri, J.

One Birendra Chandra Das, the original writ petitioner was the owner of plot Nos.229 and 240 measuring about 3.7 acres and 2.56 acres respectively in Mouza Gourcharan within P.S Matigara by purchase. After purchasing the aforesaid two plots of land by registered deed of conveyance dated 6th February, 1957 and 19th March, 1968, the original petitioner, since deceased recorded his name in the record of

rights. Subsequently, the Government of West Bengal requisitioned the said plot of land with other plots of Mouza Gourcharan in accordance with the provision contained in Section 3(1) of the West Bengal Land (Requisition and Acquisition) Act, 1948 by issuing a notice date 5th May, 1990. The above named, Birendra Chandra Das with three other persons challenged the order of requisition by filing a writ petition which was registered as CO 4463(W) of 1991. During the pendency of the writ petition it was agreed by the Siliguri Jalpaiguri Development Authority (SJDA), respondent No.4 herein that plot No.229 will be acquired, while plot No.240 will be derequisitioned and released in favour of the petitioner. In view of such agreement with the petitioner and SJDA the aforesaid writ petition was dismissed as withdrawn. In order to owner the said agreement, the Chief Executive Officer SJDA informed the District Magistrate, Darjeeling on 27th July, 1994 in writing that plot No.240 measuring about 2.65 acres shall be derequisitioned and released in favour of the petitioner. An inquiry under Section 7 of the 1948 Act was held at the behest of the District Magistrate and Collector, Darjeeling on 19th October, 1995 wherein the petitioner was called upon to be present during inquiry. Subsequently, on 30th November, 1995, the Collector, Darjeeling issued a letter in favour of the petitioner that plot No.240 belonging to the petitioner shall be released in favour of him after taking possession from SJDA and it would be handed over to the petitioner on 11th December, 1995. However, the said letter was not

given effect to either by the Collector or the SJDA. As under the instruction of the petitioner, above numbered writ petition was dismissed as withdrawn, the petitioner repeatedly pursued the authorities to return plot No.240 as the respondents failed and neglected to comply with their own declaration, the petitioner is compelled to file the instant writ petition.

During the pendency of the writ petition, the petitioner bequeathed a property by executing a will in favour of the substituted petitioner, namely Manoj Kedia. The said will duly probated and the present petitioner is substituted in place of the original petitioner namely Birendra Chandra Das. Further case of the petitioner is that since final award was declared in respect of plot No.229 and 240 beyond a period of three years as stipulated under Section 7A of Act (II) of 1948 entire acquisition process should be held to be lapsed by operation of law. The respondent Nos.1, 2 and 3 have filed an affidavit-in-opposition controverting the allegations made in the instant writ petition. It is stated by the respondents that the property in question along with other lands was acquired for greater public interest to establish a truck terminal. The Chief Executive Officer, SJDA submitted a proposal for derequisition of 2.65 acres of land in plot No.240 vide memo dated 27th July, 1994. Therefore, action was taken to handover the land in question to the writ petition but subsequently it was not released considering the interest of public purpose. It is further stated by the

answering respondents that amount of compensation of Rs.160539/-, 80 percent of amount of compensation towards interim payment has already been made in favour of the petitioner.

The respondent Nos.4 and 5, SJDA has filed a separate affidavit-in-opposition controverting the allegations made out in the writ petition. Specific case of the respondent Nos.4 and 5 is that by an order of requisition dated 5th May, 1990 issued by the Collector, Darjeeling RS plot Nos.229 and 240 were requisitioned for the purpose of maintaining supplies and essential services to the life of the community in general increasing employment opportunities for the people by establishing commercial estates and industrial estates and also for setting up a truck terminal at Matigara. Possession of the land was made over to the respondent Nos.4 and 5 on 14th May, 1990. Subsequently, by a notice dated 10th February, 1993 issued under Section 4(1)(a) of the West Bengal Land (Requisition and Acquisition) Act, 1948 requisition of land including plot Nos.229 and 240 was published in Calcutta Gazette thereby acquisition and requisition was complete in accordance with law. SJDA being the requiring authority deposited a sum of Rs.2,24,74,239/- only to the Collector, Darjeeling towards acquisition of the land. The Collector, Darjeeling made an award in favour of awardees and all the awardees including the petitioner receipt compensation. The acquired land has been mutated in the name of SJDA. At present the petitioner cannot claim any right in respect of RS plot No.240. The

petitioner has filed an affidavit-in-reply controverting the case of the respondents and reiterating his case.

On 29th September, 2021 the substituted writ petitioner has filed a supplementary affidavit annexing the order passed in Miss Judicial (Probate) Case No.35 of 2019.

Mr. Ayan Banerjee, learned Advocate for the petitioner at the outset submits that in respect of plot No.229 the petitioner has received 80% of the compensation amount. However, with regard to plot No.240, the Collector, Darjeeling by a memo dated 30th November, 1995 clearly declared that the said plot shall be released in favour of the petitioner. Subsequent to such memo, the respondents cannot say that plot No.240 was required by respondent No.4 and 5.

It is further submitted by Mr. Banerjee, that in the instant case, land acquisition proceeding was initiated by notification dated 5th May, 1990 under Section 3 of Act (II) of 1948. The notification under Section 4(1)(a) of the said act was issued on 10th February, 1993 and the award was published on 26th July, 1996. Since the award has been passed beyond the period of three years, the said proceeding has lapsed by operation of Section 7A of Act (II) of 1948. The amended provision of Section 7A provides that the Collector has to make an award under Sub-Section (2) of Section 7 within a period of three years from the date of publication of notice by the official gazette under Sub-section 1(1) of Section 4 and if such award is not made within the period of three years

the said notice shall lapse. In the instant proceeding notice was issued on 10th February, 1993 and the award was declared on 26th July, 1996 that is beyond three years.

The issue was taken up by consideration of the Full Bench of the High Bench of the High Court at Calcutta in the **State of West Bengal vs. Sabita Mondal** reported in 2011 (3) CHN 555. In the said judgment it was decided by the Full Bench of this Court that where in cases where Collector has failed to pass any award within three years of the date of issuance of notice, those notices under Section 4(1)(a) would lapse. Thus, in respect of notice issued after 31st March, 1992, the award must be passed within three years from the date of publication of notice. Thus, the effect of acquisition by a notice under Section 4(1)(a) of the Act (II) by 1948 is lapsed in respect of the instant case.

Mr. Banerjee, further submits that when the respondents have already derequisitioned the amount obtaining to plot No.240 belonging to the petitioner and it was communicated by the Collector to the petitioner and on the basis of such assurance the petitioner withdrew his writ petition, the respondents cannot subsequently say that plot No.240 has been requisitioned.

Learned Advocate for the State, on the other hand, submits that along with plot No.229, plot No.240 was acquired by the Collector and possession of the said plot was handed over in favour of SJDA. The character of the said land has been changed by raising construction by

the SJDA. Therefore, at this stage plot No.240 cannot be released in favour of the petitioner.

Learned Advocate for the SJDA, on the other hand, submits that the instant writ petition should be held to be defeated by delay. The acquisition proceeding was made in the year 1990-91 and the writ petition has been filed in the year 2012. In the mean time, plot No.240 has been requisitioned by SJDA. The said land has been mutated in the name of SJDA and at this stage petitioner cannot claim any relief from this Court.

In reply, the learned Advocate for the petitioner submits referring to a decision of the Hon'ble Supreme Court in the case of **Vidya Devi vs. State of Himachal Pradesh & Ors** reported in **(2020) 2 SCC 569** that delay and lapse cannot be raised in a case of continuing cause of action of where the facts shock judicial conscience of Court. Moreover, there is no period of limitation for Courts to exercise constitutional jurisdiction to do substantial justice. In the instant case the petitioner previously filed a writ petition challenging the order of requisition which was registered as CO No.4463 (W) of 1991. On the assurance made by the respondents, especially, respondent No.3 that the said plot is derequisitioned and shall be released in favour of the petitioner. The petitioner withdrew the said writ petition. Subsequently, when the respondents failed and neglected to release plot No.240, the petitioner

has filed the instant writ petition in 2012. Thus, there is no delay in filing the instant writ petition.

Haring heard the learned Counsels for the parties and on careful perusal of the entire materials on record, it is found from the Full Bench decision of this Court in the case of Sabita Mandol that the effect of land acquisition (West Bengal Amendment) Act, 1997 which came into operation on the midnight between the 31st March, 1997 and 1st April, 1997 prevented of those notices under Sub-section (1)(a) of Section 4 issued after April 1, 1994 from being lapsed by giving scope of revival by way of a notice under Section (3B) of Section 9 of the said Act if award had not been passed within three years from the date of publication of such notice and it would otherwise lapse if the said Act of 1997 would not come into operation at the midnight of March 31, 1997.

However, in respect of those notices under Sub-section (1)(a) of Sub-section (4) which were issued prior to March 31, 1992 and in respect of which no order had not been passed by March 31, 1995, those notices had already lapsed and by the Amendment Act, 1997 of the Land Acquisition Act by the West Bengal Legislature, no provision has been made for revival of lapse notices which stood lapse already on March 31, 1997 for non-compliance of the provision of Amendment Act of 1996. By the Amendment Act, 1997 only those notices under Sub-section (1)(a) of Section 4 which would have lapsed on the midnight of March 31 of 1997 or on subsequent dates have been saved.

In the instant case notice under Section 4(1)(a) was issued on 10th February, 1993. Therefore, award was required to be published within three years from the date of issuance of notice. However, the award was published on 26th July, 1996. In that event this Court has no alternative but to hold relying the decision of Sabita Mandol (supra) that the notice dated 10th February, 1993 is lapsed and requisition on the basis of such notice is bad in law and inoperative.

In regard to plot No.229 this Court is of the view that when the petitioner accepted 80% of the award, he cannot at this stage claim release of plot No.229.

With regard to plot No.240 I have come to this finding that the said plot cannot be requisitioned because of failure on the part of the respondents to publish award causing thereby lapse of the effect of the notice. Moreover, the respondents cannot subsequently deny its stand after 1995 when the Collector in writing undertook to release plot No.240 in favour of the petitioner.

It is vehemently urged by the respondent Nos.4 and 5 that the character of the land has been changed and construction has been made on plot No.240. When this Court has held that the acquisition and requisition is bad in law in view of the fact that the notice dated 10th February, 1993 is lapsed by operation of law, the respondents cannot claim any right over the said property.

Under such circumstances, the instant writ petition is allowed in part. The respondent No.3 is directed to take over possession of plot No.240 of Mouza Gourcharan within P.S Matigara from SJDA, respondent Nos.4 and 5 within three weeks from the date of communication of the order and deliver peaceful possession of the said plot in vacant condition within two weeks thereafter.

The petitioner is also entitled to get rent compensation which will be fixed by the respondent No.3 from 10th February, 1993 till the date of delivery of possession in favour of the petitioner and the said amount shall be disbursed to the petitioner within one month from the date of communication of the order.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertaking.

(Bibek Chaudhuri, J.)