

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

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

W.P.A. 1854 of 2022

**Rabi Das & Ors.
-Versus-
The State of West Bengal & Ors.**

**For the Petitioner : Mr. Subhasish Misra, Adv.
Mr. Swarup Das, Adv.**

For N.F.Railway : Mr. Ajoy Kumar Singhanian, Adv.

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

Heard & Judgment On : 8th February, 2023.

The issue that is germane in the instant writ petitioner is as to whether the provision of Land Acquisition Act, 1894 or the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 is applicable in L.A. Case No.10/2008-09 in view of Notification No.JS-852/LA/9R-88/21 dated 25th August, 2021 is germane in the instant writ petition.

It is not in dispute that certain plots owned by the petitioners were acquired for public purpose sometimes in the year 2008-2009 for expansion of New Moynaguri to Jogighopa B.G. Line. After acquisition, by a memo No.JS-3166/LA/II-65/09 dated 8th December, 2014, the

Joint Secretary to the Government of West Bengal declared that LAP Case No.10 of 2008-09 has already been lapsed due to non-declaration of award in respect of declaration under Section 6 published in the Kolkata Gazette on 16th July, 2011 and the said proceeding may be initiated afresh under the new Act of 2013.

The learned Advocate for the petitioners have raised a pertinent question as to whether the same authority on a subsequent date, i.e. on 25th August, 2021 can declare that as the awardees in LAP Case No.10 of 2008-09 was declared within 5 years prior to commencement of the new Act of 2013 and railway took possession and give a project work, the old act is deemed not to have been repealed and the awardees are entitled to get compensation under the old Act.

The State respondent No.4 has used affidavit-in-opposition against the instant writ petition. It is canvassed by the learned Advocate for the respondent No.4 that in connection with the above-mentioned case, notice under Section 4 of the Land Acquisition Act, 1894 was issued and published in the extraordinary Kolkata Gazette on 4th December, 2009. Subsequently, declaration was published in Gazette Notification dated 19th May, 2010 by publishing the declaration the acquisition process was complete. Thereafter, award was also published under the old Act on 1st February, 2011, i.e. prior to commencement of 2013 Act. In view of such circumstances, memo No.

JS 3166 dated 8th December, 2014 has lost its force by operation of law and the petitioners cannot claim any relief by virtue of such notification.

This Court exercising jurisdiction under Article 226 of the Constitution is not in a position to accept or reject any memo issued by the respondent authority, particularly respondent No.4 in connection with a particular proceeding.

However, it is made clear that since memo No.3166 dated 8th December, 2014 has not been recalled by the Joint Secretary to the Government of West Bengal, the concerned authority is under obligation to take a final decision as to whether 2013 Act is applicable in respect of the petitioners with regard to the assessment of compensation.

The petitioners have already filed a representation to the authority on 31st May, 2022 which has not been disposed of as yet.

In view of such circumstances, the respondent Nos.2 & 3 are directed to consider the representation dated 31st May, 2022 submitted by the petitioners in the light of the observation made hereinabove by this Court and come to a specific finding as to whether 2013 Act is applicable in respect of LAP Case No.10/2008-09 for assessment of compensation in favour of the petitioners after giving opportunity to the petitioners or their representatives of being heard within four weeks from the date of communication of this order.

The petitioners are directed to serve a copy of the representation to the respondent No.3 along with a server copy of the order for information and necessary action within the stipulated period of time.

The petitioners are at liberty to act on the server copy of the order.

In the process of adjudication, the respondents are also directed to consider as to whether any compensation has been made in favour of the petitioners in terms of the memo dated 8th December, 2014 or not.

(Bibek Chaudhuri, J.)

***Mithun
Ct No.2.
Sl No.06.***