

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

The Hon'ble **JUSTICE SUVRA GHOSH**

WPA 1747 of 2022

**Johra Bibi @ Khatun
Vs.
The State of West Bengal & Ors.**

For the Petitioner: Mr. Amit Kr. Pan, Adv.,
Ms. Tanusri Santra, Adv.

For the State: Mr. Soumitra Bandyopadhyay, Adv.,
Mr. R.C. Guchhait, Adv.

Hearing Concluded on: 04.04.2024

Date: 18.04.2024

SUVRA GHOSH, J. :-

1. The prayers of the petitioner, interalia, are as hereunder.
 - a. A writ in the nature of Mandamus commanding the respondents to determine and pay compensation in question to the petitioner in respect of the said land upon initiating a fresh proceeding in terms of the relevant provisions of The Right to Fair Compensation and Transparency in Land Acquisition,

Rehabilitation and Resettlement Act, 2013, (Act 30 of 2013) forthwith;

- b. A writ in the nature of Mandamus commanding the respondents to pay compensation in question on account of damages and/or occupational charges from 1st April, 1997 till the date of initiation of a fresh proceeding in terms of the relevant provisions of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (Act 30 of 2013);

2. Facts which are admitted are enumerated hereinbelow:-

Land of the petitioner measuring about 0.10 acres in R.S. plot no. 818 corresponding to L.R. plot no. 871 in mouza – Chachanda, J.L. no. 82, Police Station – Samsherganj, District – Murshidabad was requisitioned for construction of Farakka Barrage Project from Basudevpur to Ratanpur Part V, under section 3 (1) of the West Bengal Land (Requisition and Acquisition) Act, 1948 (hereinafter referred to as the Act of 1948) and notice under section 4 (1a) of the Act was issued on 31st May, 1979. Adhoc compensation of 80% of the estimated amount under section 8B of the Act of 1948 was paid to the petitioner on 2nd December, 1977. No award was declared during the lifetime of the Act. No notice under section 9 (3B) of the Land Acquisition Act, 1894 was issued. Possession of the land was taken over by the respondents.

3. Learned counsel for the petitioner has submitted that since notice under section 9 (3B) of the Act of 1894 was not issued, the notice under section 4 (1a) of the Act of 1948 lapsed. The land has already been utilised by the respondents. Therefore it is incumbent upon the respondents to initiate fresh proceedings under The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 upon issuance of notice under section 11 of the Act. Learned counsel has placed reliance on the authorities in *Vidya Devi v/s. State of Himachal Pradesh and Others* reported in (2020) 2 Supreme Court Cases 569, *The State of West Bengal and Others v/s. Ganesh Samanta* reported in (2014) 4 WBLR (Cal) 996 and *State of West Bengal and Others v/s. Aziman Bibi and Others* reported in (2016) 15 Supreme Court Cases 710 in support of his contention.
4. Per contra, learned counsel for the respondents has submitted that since no award was declared during the lifetime of the Act of 1948 and only adhoc compensation of 80% of the estimated amount was paid to the petitioner, the proceedings lapsed. No notice under section 9 (3B) was served upon the petitioners to revive the said acquisition. Since the acquisition proceedings was initiated under the Act of 1948, the 2013 Act is not applicable in this case and the petitioner is not entitled to compensation under the said Act. The petitioner can at best claim compensation under the 1948 Act.
5. Learned counsel has emphasised on the fact that the petitioner came before this Court after delay of about 40 years and woke up from slumber by filing an application under The Right to Information Act before the authority only

after promulgation of the 2013 Act. Such delay not being properly explained, the writ petition should be dismissed on that score alone. Learned counsel has placed reliance on the authorities in *New Delhi Municipal Council v/s Pan Singh and Others* reported in (2007) 9 Supreme Court Cases 278, *Shiv Dass v/s. Union of India and Others* reported in (2007) 9 Supreme Court Cases 274, *State of Maharashtra v/s. Digambar* reported in 1995 AIR 1991, *State of Maharashtra v/s. Digambar* reported in (1995) 4 Supreme Court Cases 683, *State of West Bengal v/s. Sabita Mondal* reported in 2011 (3) CHN (CAL) 555, *State of West Bengal v/s. Soumendra Dey* reported in 2003 1 ILR (Cal) 410, *Union of India and Another v/s. Subhash Chander Sehgal and Others* reported in 2022 SCC Online SC 1059, *State of West Bengal & Ors. v/s. Sri Saktipada Saha Chowdhury & Ors.* reported in M.A.T. 1545 of 2018 and *The State of West Bengal and Others v/s. Niladri Chatterjee and Others* reported in M.A.T. 86 of 2016 in support of his contention.

6. At the outset, the issue of maintainability of the writ petition on the ground of delay and laches on the part of the petitioner raised by the respondents is required to be dealt with. It is a fact that the plot in question was requisitioned under section 3(1) of the Act of 1948 and notice under section 4(1a) of the Act was issued on 31st May, 1979. The Act of 1948 expired on and from 31st March, 1997. The petitioner sought information with regard to the acquisition from the Special Land Acquisition Officer, Murshidabad by an application filed under The Right to Information Act, 2005 only in 2015. The writ petition was filed on 1st February, 2022.

7. Ordinarily it is held in a catena of decisions of the Hon'ble Supreme Court as well as this Court that though there is no period of limitation provided for filing a writ petition, the same should be filed within a reasonable time. Discretionary jurisdiction under Article 226 of the Constitution of India may not be exercised in favour of petitioners who approach the Court after a long time [New Delhi Municipal Council (supra)]. The authority in Shiv Dass (supra) observes that if there is inordinate delay on the part of the petitioner which is not satisfactorily explained, the Court may decline to intervene and grant relief in exercise of its writ jurisdiction. The said proposition of law has been echoed in the authorities in State of Maharashtra (supra).
8. Admittedly there has been some delay on the part of the petitioner in filing the writ petition. The Hon'ble Supreme Court in the authority in Vidya Devi (supra) has held as follows:-

“Delay and laches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the Court. Condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case. It will depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice. In a case where the demand for justice is so compelling, a constitutional Court would exercise its

jurisdiction with a view to promote justice, and not defeat it”.

9. The authority in *Tukaram Kana Joshi v/s. MIDC* reported in (2013) 1 SCC 353, while dealing with a similar fact situation, held that most of the authorities which state that delay and laches extinguish the right to put forth a claim pertain to service jurisprudence. In a case where the functionaries of the State took over possession of the land without any sanction of law, the State must either comply with the procedure laid down for acquisition or requisition, or any other permissible statutory mode.
10. In the case in hand, possession of the plot in question was taken over by the State sometime in 1979 and neither the acquisition proceeding was taken to a logical conclusion, nor any compensation paid to the petitioner besides the adhoc compensation under section 8B of the Act of 1948. The cause of action herein is a continuing cause of action which involves breach of a constitutional right of the petitioner. The petitioner cannot be debarred from seeking remedy under Article 226 of the Constitution of India for a breach committed by the State merely on the ground of delay in approaching the authority or filing the writ petition. The demand for justice in the present case is so compelling that the matter needs to be dealt with on merits and cannot be discarded merely on the ground of delay and laches on the part of the petitioner.
11. On merits, admittedly possession of the plot in question was taken over pursuant to notice issued under section 4 (1a) of the Act. No award was

declared during the life time of the Act. No notice under section 9(3B) of the Land Acquisition Act, 1894 was also issued. In the result, the acquisition lapsed.

12. It is trite law that by virtue of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1996 which deemed to have come into force from April 1st, 1994, a duty was cast upon the Collector to make an award under section 7(2) within a period of three years from the date of publication of the notice in the Official Gazette under section 4 (1a) and if such award was not made within the period as aforesaid, the said notice would lapse. In a case where the said notice had been published more than two years before the commencement of the Amendment Act of 1994, the award should be made within a period of one year from the date of commencement of that Act. If any notice under section 4 (1a) had been issued before March 31, 1992 and the Collector had failed to pass any award thereon by March 31, 1995, the notice would lapse. [State of West Bengal v/s. Sabita Mondal (supra)]. Herein, the notice under section 4 (1a) lapsed upon expiry of the statutory period of time and was not revived upon issuance of notice under section 9 (3B) of the Land Acquisition Act, 1894. It is a fact that section 24 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 deals with land acquisition under the Land Acquisition Act, 1894 and is not applicable to acquisition proceedings under the Act of 1948. The said provision of law applies to proceedings pending on the date of enforcement of the 2013 Act, i.e., 1st January, 2014 and does not revive stale and time barred claims or reopen

concluded proceedings. At this juncture, this Court is inclined to refer to the authority in the State of West Bengal and Others v/s. Ganesh Samanta (supra) wherein this Court has dealt with the proceedings under the Act of 1948. The Court held as follows: - “When the notice lapsed, we cannot hold that the title which was vested with the State by operation of law under section 4 (1a) of the said Act will continue to remain with the State even after the State respondent failed to publish the award under Section 7A of the said Act, within the statutory period. in view of the subsequent development in the Land Acquisition Laws with the enactment of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and particularly in view of section Section 24(1)(a) of the said Act, the State respondent in our view cannot complete the acquisition proceeding by following Section 9(3A) of the Land Acquisition Act, which has since been repealed. The State respondents, in our view is now required to complete the acquisition proceeding by following the relevant provision of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.”

13. Learned counsel for the respondents has placed reliance on the authority in Union of India and Another (supra) wherein the acquisition proceedings had not lapsed and the land continued to be vested in the State. The fact and circumstances of the present case is distinguishable from that of the said authority. Learned counsel has also drawn the attention of this Court to judgments of Hon’ble Division Benches of this Court wherein it is held that since the acquisition proceeding was initiated under the Act of 1948 and not

under the Act of 1894, section 24 or section 26 of the 2013 Act cannot enure to the benefit of the writ petitioners therein.

14. There is no quarrel with the said proposition of law. Admittedly the acquisition proceeding initiated under the Act of 1948 lapsed and was not revived by issuance of notice under section 9 (3B) of the 1894 Act and as such, the question of payment of compensation under section 24/26 of the 2013 Act does not arise. Also, the authority relied upon by the petitioner in State of West Bengal and Others (supra) deals with acquisition under the 1894 Act and is not applicable to the present case.
15. Therefore it can be concluded that though the land in question has not been acquired under the 1948 Act, possession of the land has been taken by the respondents who still retain the same. In the result, the only option left for the State is to acquire the land by initiating proceeding afresh by issuing notice under section 11 of the Act of 2013.
16. In the light of the discussion made hereinabove, the writ petition is allowed.
17. The Special Land Acquisition Officer, Murshidabad, being the 3rd respondent herein, is directed to initiate fresh proceedings under The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and determine and pay compensation to the petitioner in terms thereof upon deducting the amount of adhoc compensation paid earlier. The land being in possession of the respondents since 1977, the 3rd respondent is further directed to determine and pay compensation to the petitioner from the date of taking over possession of the

land till initiation of the proceedings under the 2013 Act in addition to the compensation payable in the proceeding under the Act.

18. The entire exercise should be completed within six months from the date of communication of this judgment.
19. There shall however be no order as to costs.
20. Since no affidavit is invited, the allegations contained in the writ petition are deemed not to have been admitted.
21. 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)