

March 20, 2024
ARDR (15)

WPA 3443 of 2023

Arghya Banerjee & ors.
Vs.
The State of West Bengal & ors.

Adv. Sourav Sen,
Adv. Swapan Kumar Kar,
...for the petitioners.
Adv. Ashim Kumar Ganguly,
Adv. Sk. Md. Masud,
...for the State.

Heard learned counsels for the parties.

The fact which is not in dispute is as follows:-

Requisition under Section 3(1) of the West Bengal Land (Requisition and Acquisition) Act, 1948 was issued upon the predecessor-in-interest of the petitioners and possession of the land taken by the respondents in 1976 in connection with L.A. case no. I-13 of 1974-1975. The Act of 1948 lapsed on 31st March, 1997 and the Land Acquisition (West Bengal Amendment) Act, 1997 came into force on 1st April, 1997. Since no award was declared during the lifetime of the 1948 Act, notice under Section 9(3A) of the Act was issued upon the petitioners/ predecessor-in-interest on 1st February, 2013. No award was declared by the authority within the stipulated time frame. Since the land of the petitioners has admittedly been utilised by the authority, the petitioners have claimed compensation in respect of the same in terms of the Right to Fair Compensation and Transparency in

Land Acquisition, Rehabilitation and Resettlement Act, 2013.

Learned counsel for the petitioners has placed reliance on the authority in **Haryana State Industrial And Infrastructure Development Corporation Ltd. & ors. vs. Deepak Aggarwal & ors.** reported in **2022 Live Law (SC) 644** for the proposition that since award was not declared during lifetime of the Land Acquisition Act, 1894, the land losers are entitled to compensation under the Act of 2013.

Placing reliance on the judgment of the Hon'ble Supreme Court of India in **State of West Bengal & ors. vs. Niladri Chatterjee & ors.** reported in **2017 SCC Online Cal 21450** and the judgments of the Hon'ble Division Benches of this Court in **MAT 86 of 2016** and **MAT 1545 of 2018**, learned counsel for the respondents submits that since the acquisition was initiated under the Act of 1948 and not under the Act of 1894, the petitioners are not entitled to compensation under the 2013 Act.

In the judgment in MAT 86 of 2016 the Hon'ble Division Bench has held that no notice under Sections 9(3A) and 9(3B) of the Act of 1894 was issued for which the acquisition was considered to be initiated under the 1948 Act and not under the 1894 Act. The same proposition of law has been echoed by the other authorities relied upon by the respondents.

The fact situation of the present case can be distinguished from that of the authorities relied upon by the respondents. In the present case, though the acquisition proceeding was initiated under the Act of 1948, it was subsequently converted under the Act of 1894 upon issuance of notice under Section 9(3A) of the Act. Admittedly no award was declared during the lifetime of the Act. Since possession of the land was taken by the authority, the acquisition proceedings cannot be deemed to have lapsed under Section 24(2) of the Act of 2013. However, the petitioners are entitled to compensation under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 in view of the fact that the land has been utilised and no award declared within the stipulated time frame.

In the result, the writ petition succeeds.

The District Magistrate and Land Acquisition Collector, Hooghly, being the 2nd respondent herein, is directed to disburse compensation in favour of the petitioners in terms of the Act of 2013 within two months from the date of communication of this order upon affording reasonable opportunity of hearing to the petitioners, in accordance with law subject to the petitioners submitting all relevant documents before the authority in support of their respective claims.

There shall however, be no order as to costs.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh, J.)