

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

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

**WPA/10244/2016
PAWAN KUMAR CHOWDHURY & ORS.
VS.
STATE OF WEST BENGAL & ORS.**

With

**FMA/2421/2008
KOLKATA METROPOLITAN DEVELOPMENT AUTHORITY VS BANKRA
NAGARIK FORUM AND ORS.**

With

**WPA/15608/2004
IA NO: CAN/1/2004(Old No:CAN/9418/2004),
CAN/2/2004(Old No:CAN/9419/2004),
CAN/4/2009(Old No:CAN/770/2009)**

**BANKRA NAGARIK FORUM & ORS.
VS
STATE OF WEST BENGAL & ORS.**

For the Petitioners
in WPA 10244 of 2016

: Mr. Debayan Bera, ld. Senior Advocate,
Mr. Swapan Kumar Kar ... advocates

For the State

: Mr. Pantu Deb Roy,
Mr. Subrata Guha Biswas

... advocates

For K.M.D.A.

: Mr. Kishore Dutta, ld. Advocate General,
Mr. Satyajit Talukdar,
Ms. Rutika Verma ... advocates

Reserved on

: 19.07.2024

Judgment on

: 23.08.2024

Hiranmay Bhattacharyya, J.:-

1. The writ petitioners have prayed for issuance of a writ of mandamus commanding the respondents to quash the order of the LA Collector (HIT, Howrah) dated 16.02.2015 and for a declaration that the plots of land being RS Dag No. 1447, 1446, 1445, 1441, 1443, 1328, 1332, 1442, 1444 and 1371 of Mouja Pakuria. JL No. 54 which were subject matter of LA case nos. 26/Act-II/86-87, 29/Act-II/86-87 and 29/1/Act-II/86-87 are free from acquisition proceedings and for a direction upon the respondent authorities to release the lands and deliver symbolic possession to the writ petitioners. Alternatively the writ petitioners prayed for initiation of a fresh land acquisition proceedings under Act 30 of 2013.
2. The subject matter of the writ petition relates to Plot Nos. 1447, 1446, 1445, 1441, 1443, 1328, 1332, 1442, 1444 and 1371 Possession of the aforesaid lands were taken under Section 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948 (Act II of 1948) on 24.05.1988. Thereafter, a notification under Section 4(1a) of the West Bengal Act II of 1948 was published by the Government of West Bengal in the Kolkata Gazette. The writ petitioners claim to have purchased the aforesaid plots excepting plot no. 1337 between 10.03.2000 and 07.06.2000 from the erstwhile recorded owners by virtue of several registered deed of conveyance. Plot no. 1337 was purchased by the writ petitioners sometimes in the month of February, 2002 from the erstwhile recorded owners by a registered deed of conveyance. The writ petitioners claim that they have got possession of the aforesaid lands from their vendors and their names were duly recorded in the record of rights. The writ petitioners claim that on 17.05.2004 a notice was issued by the Special Land Acquisition Officer (HIT, Howrah) intimating them that in course of hearing under Section 9(3B), the petitioners were found to be the persons interested and, therefore, they were directed to attend the hearing on 26.05.2004. An award was declared on 11.10.2004 and the valuation of lands was assessed as on the date of publication of notification for acquisition on 14.12.1989.

3. Challenging the notice dated 17.05.2004 the writ petitioners filed a writ petition being WPA 3719 of 2005 which was disposed of by an order dated 01.02.2010 directing release of the lands to the petitioners. The State of West Bengal preferred an appeal against the said order dated 01.02.2010 being FMA 1120 of 2010 and the Hon'ble Division Bench by a judgment and order dated 03.01.2013 was pleased to set aside the direction to release the lands and the respondent authorities were directed to hear the writ petitioners on the basis of the notice dated 17.05.2004.
4. The writ petitioners filed a Special Leave Petition before the Hon'ble Supreme Court being SLP (Civil Number) 38146 of 2013 and the Hon'ble Supreme Court was pleased to dispose of the said Special Leave Petition by an order dated 16.12.2014 by giving liberty to the writ petitioners to move before the authorities in terms of the order passed by this Court.
5. Thereafter, the writ petitioners submitted a representation dated 13.01.2015. Such representation was disposed of by the LA Collector (HIT, Howrah) by an order dated 16.02.2015 by rejecting the prayer for release of the land in question. The said order is under challenge in this writ petition.
6. Mr. Bera, learned Advocate appearing in the writ petitioners submitted that though notice under Section 4(1a) of Act II of 1948 was published on 14.12.1989 but no award was passed on or before 31.03.1995. He, therefore, submitted that the notice under Section 4(1a) stood lapsed after 31.03.1995. He further submitted that no notice under Section 9(3A) or 9(3B) were issued by the respondents to revive the lapsed proceeding. He further contended that upon lapse of the notices under Section 4(1a) of Act II of 1948, the property which stood vested upon publication of such notice got divested and the title of the property reverted back to the original owners i.e., vendors of the petitioners.
7. Mr. Bera placed reliance upon the decision of a Co-ordinate Bench in the case of **Sabitri Devi & Ors. vs. State of West Bengal** reported at **(2002) 3 CHN 108** in support of his contention that in cases where notices under

Section 4(1a) of Act II of 1948, lapsed the provision of Section 9(3B) of the Land Acquisition Act will not be attracted. By referring to the said decision Mr. Bera contended that the vesting under Section 4(1a) of Act II of 1948 cannot continue upon lapse of notice under Section 4(1a) of Act II of 1948. He further submitted that the view taken by the learned Single Judge in **Sabitri Devi** (supra) was upheld by the Full Bench of this Hon'ble Court in the case of **State of West Bengal vs. Sabita Mondal** reported at **(2011) 3 CHN (Cal) 555**. He also referred to a decision of the Hon'ble Division Bench in the case of **Mandodari Bhakat vs. State of West Bengal** reported at **(2013) 1 CHN (Cal) 444** in support of his contention that in view of lapsing of acquisition proceedings under Section 7A of Act II of 1948 the title of the of the original owner revives.

8. In support of his contention that in the event the State is not in a position to release the land in favour of the petitioner a direction is to be passed to take steps to complete the acquisition proceeding and pay compensation in accordance with the provisions of the Right to Fair Compensation & Transparency in Land Acquisition, Reconsultation and Resettlement, 2013 (for short "the 2013 Act"), Mr. Bera placed reliance upon a decision of a Co-ordinate Bench in **WPA 6705 of 2018** in the case of **Mahadeb Khan & Ors. vs. The State of West Bengal and Ors.**
9. Mr. Bera attacked the impugned order by contending that the writ petitioners purchased the land in between 10.03.2000 to 28.02.2002 i.e., long after the proceeding for acquisition stood lapsed on 31.03.1995. He further contended that for the first time on 22.01.2004 the respondents issued notice under Section 9(3) and (4) for completing the said proceeding. He further contended that since no notice under Section 9(3A) or (3B) of the Act was issued, the proceedings did not revive under the amended Act of 1997. With regard to the reference made to the matter of **Bakra Nagarik Forum vs. State of West Bengal** in the impugned order, Mr. Bera contended that LA Case No. 25 of Act II/ 84-85 was the subject matter in the case of Bakra Nagarik Forum where as the petitioners are concerned

with LA Case Nos. 26 and 29 of Act II/86-87. Mr Bera thus, contended that in the case of Bakra Nagarik Forum (supra) a different land acquisition proceeding was in issue and therefore, the decision passed in the said matter can have no bearing to the case on hand.

10. KMDA being the 6th respondent herein was represented by the learned Advocate General. The learned Advocate General contended that the writ petitioners are post vesting transferees and, therefore, cannot challenge the intricacies of the acquisition proceedings when the original owners did not come forward to challenge the acquisition proceedings at any point of time. In support of such contention the learned Advocate General placed reliance upon the decisions of the Hon'ble Supreme Court in the case of ***Star Wire vs. State of Haryana*** reported at **(1996) 11 SCC 698**; ***Delhi Development Authority vs. Narendra Kumar Jain*** reported at **(2024) 3 SCC 721**; ***Shiv Kumar vs. Union of India*** reported at **(2019) 10 SCC 229** and ***Delhi Development Authority vs. Damini Wadhwa*** reported at **(2022) 10 SCC 519**.
11. The learned Advocate General further contended that the document of transfer of a vested property is a void instrument and, therefore, the petitioners did not acquire any right in respect of the property in question.
12. Without waiving his right on the issue of maintainability of a challenge to the acquisition proceedings at the instance of post vesting transferees, the learned Advocate General contended that the upon issuance of notice under Section 4(1a) of Act II of 1948, the lands in question stood vested to the State. He further contended that if no award is passed within the time limit as contemplated under Section 4(1a) of Act II of 1948 only the notice under Section 4(1a) of Act II of 1948 lapses. He submitted that vesting of property under Act II of 1948 is by operation of law and divesting of such property cannot take place except by operation of law.
13. The learned Advocate General drew the attention of the Court to the provision laid down under Section 7A of Act II of 1948 which states that the

notice under Section 4(1a) will lapse if the award is not made within the stipulated time limit where as Section 11A of the Land Acquisition Act 1894 provides that if no award is made within the specified time limit, the entire proceedings for the acquisitions of land shall lapse. By highlighting the distinction in the expressions used with regard to lapsing under Section 7A of the Act II of 1948 and Section 11A of Land Acquisition Act 1894, the learned Advocate General would contend that the legislature did not intend divesting of the property upon lapse of notices under Section 4(1a) of Act II of 1948.

14. The learned Advocate General contended that the law relating to vesting of the property in connection with acquisition proceedings has undergone a sea change. He submitted that since the State has taken possession of the land in question and issued a notice under Section 4(1a) of Act II of 1948 the owner of the land loses title to it and the Government becomes the absolute owner of the land. He further contended that once the land vests in the State it cannot be divested, even if there is some irregularity in the acquisition proceedings. In support of the aforesaid contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of **Indore Development Authority vs. Manoharlal and Ors.** reported at **(2020) 8 SCC 129**.
15. The learned Advocate General further contended that under Section 17 of the Land Acquisition Act 1894, upon taking possession of the land needed for a public purpose such land vests absolutely in the government free from all encumbrances even before an award is passed under the provisions of the Land Acquisition Act. He contended that in a case falling under Section 17 of the Land Acquisition Act, 1894 the property which once stood vested cannot be divested even if no award within the time limit contemplated under Section 11A of the Land Acquisition Act 1894 is passed.

16. The learned Advocate General contended that the provisions laid down under Section 9(3B) of the Land Acquisition Act was resorted to in the case on hand as notice for acquisition of the lands in question was published under Section 4(1a) of Act II of 1948. He further submitted that the award was passed and the compensation was determined with reference to the date of publication of the notice under Section 4(1a) of Act II of 1948 i.e., 14.12.1989.
17. The learned Advocate appearing for the State adopted the argument advanced by the learned Advocate General appearing for KMDA.
18. Heard the learned Advocates for the parties and perused the materials placed.
19. Notice under Sub-Section (1) of Section 3 of West Bengal Land (Requisition and Acquisition) Act, 1948 (for short "ACT II of 1948) was issued for requisition of several plots of land including the plots of land of the petitioner giving rise to LA Case No. 29/1 (Act – II) of 1986-87. Possession of the lands in question was taken under Section 3 of the said Act on 24.05.88. Notice under Section 4(1a) of Act II of 1948 was issued on 14.12.1989 for acquiring the said plots for the purpose of increasing employment opportunities for the people by establishing commercial estate and industrial estate and for creation of better living condition in rural areas namely, for the construction of West Howrah Township project. No award was passed during the life time of Act II of 1948. A notice under section 9(3B) of the Land Acquisition Act 1894 was issued subsequently.
20. The West Bengal Land (Requisition and Acquisition) Act, 1948 (hereinafter referred to as the "1948 Act") was enacted to provide for the requisition and speedy acquisition of land for certain purpose. Section 3 deals with the power to requisition. Section 4(1) of the said Act states that where any land has been requisitioned under Section 3, the State Government may use or deals with such land for any of the purpose referred to in Sub-Section(1) of Section 3 as may appear to be expedient. Sub-Section (1a) states that the

State Government may acquire any land requisitioned under Section 3 by publishing a notice in the Official Gazette that such land is required for a public purpose referred to in Sub-Section (1) of Section 3. Sub-section (2) states that where a notice as aforesaid is published in the Official Gazette, the requisitioned land shall, on and from the beginning of the day on which the notice is so published, vests absolutely in the State Government free from all encumbrances and the period of requisition of such land shall end.

21. Act II of 1948 was amended by the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1994. By virtue of the said Amendment Act, the validity period of Act II of 1948 was extended till 31st March 1997. Act II of 1948 was further amended by West Bengal Land (Requisition and Acquisition)(Amendment) Act 1996 thereby inserting Section 7A after Section 7 of Act II of 1948.
22. Section 7A deals with award by Collector. It states that the Collector shall make an award under Sub-Section (2) of Section 7 within a period of 3 years from the date of publication of the notice in the Official Gazette under Sub-Section (1a) of Section 4 (hereinafter referred to the “said notice”) and if such award is not made within the period as aforesaid, the said notice lapsed. Proviso thereto states that in a case where the said notice has been published more than 2 years before the commencement of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1994, the award shall be made within a period of 1 year from the date of commencement of that Act.
23. In the case on hand, possession of the lands in question was taken under Section 3 of Act II of 1948 on 24.05.1988. Such possession was taken on requisition. The notice under Section 4(1a) was issued after the possession of the lands was already taken on requisition. The notice under Section 4(1a) of the 1948 Act was issued on 14.12.1989 i.e., more than 2 years before the commencement of the 1994 Amendment Act. Therefore, the proviso to Section 7A stands attracted in the present case and the notice

under Section 4(1a) issued on 14.12.1989 would deem to lapse one year after 31.3.1994 i.e., on 31.3.1995. Since no award was made within the time limit mentioned in proviso to Section 7A, the said notice stood lapsed.

24. Act II of 1948 stood expired by efflux of time on 31.03.1997. The acquisition initiated under the 1948 Act could not continue after the 1948 Act stood lapsed. The object of 1997 Amendment of the 1894 Act was to revive the acquisition which was initiated under the 1948 Act and to pay compensation therefor in terms of the 1894 Act.

25. The Land Acquisition Act was amended by West Bengal Act VII of 1997 in its application to the State of West Bengal. By virtue of such amendment, Sub-Section 3A and 3B were incorporated after Sub-Section (3) of Section. Sub-Sections 3A and 3B of Section 9 of the 1894 Act as amended in West Bengal would be relevant for which the same is extracted hereinafter.

“3A. the Collector shall also serve notice to the same effect on all such persons known or believed to be interested in any land or to be entitled to act for persons so interested, the possession whereof has already been taken on requisition under section 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948 (West Bengal Act II of 1948) (hereinafter referred to in this section as the said Act), as re-enacted by the West Bengal Land (Requisition and Acquisition) Re-enacting Act, 1977 (West Bengal Act 15 of 1977) and, in every such case, the provisions of sub-section (1) of section 4, section 5, section 5A, section 6, section 7 and section 8 of this Act shall be deemed to have been complied with:

Provided that the date of notice under this sub-section shall be the date of reference for the purpose of determining the value of such land under this Act:

Provided further that when the Collector has made an award under section 11 in respect of any such land, such land shall, upon such award, vest absolutely in the Government, free from all encumbrances.”

“3B. The Collector shall also serve notice to the same effect on all such persons known or believed to be interested in any land, or to be entitled to act for persons so interested, the possession whereof has already been taken on requisition under section 3 of the said Act, and

notice for acquisition of such land has also been published under subsection (1a) of section 4 of the said Act, and, in every such case, the provisions of section 4, section 5, section 5A, section 6, section 7, section 8 and section 16 of this Act shall be deemed to have been complied with:

Provided that the date of publication of notice under subsection (1a) of section 4 of the said Act shall be the date of reference for the purpose of determining the value of such land under this Act:

Provided further that in every such case, the Collector shall make an award under section 11 in respect of such land only for the purpose of payment of due compensation to the persons interested in such land has, upon the Collector taking possession thereof, already vested absolutely in the Government, free from all encumbrances.”

26. In the impugned order dated 16.02.2015 it has been recorded that since no award was passed during the life time of Act II of 1948, the same was revived by issuance of notice under Section 9(3B).
27. The question that arises for consideration is whether a notice under Section 9(3B) of the 1894 Act can revalidate the process of acquisition where the notice under Section 4(1a) of the 1948 Act stood lapsed.
28. Issuance of notice under Section 4(1a) resulted in converting the requisition into an acquisition. However, in view of Section 7A of the 1948 Act, the notice under Section 4(1a) stood lapsed on 31.03.1995. Consequently, the requisition revived and the same continued till 31st March 1997. In the case on hand, no notice under Section 9(3A) has been issued to convert such requisition into an acquisition.
29. A Co-ordinate Bench in **Sabitri Devi** (supra) held that a lapsed notice under Section 4(1a) could not be saved or could not survive after 31.3.1997. It was further held that lapsed notice under Section 4(1a) of 1948 Act could not be revived, though the process for acquisition could be validated by issuing a notice under Section 9(3A) of the 1997 Act. It was further held that Section 9(3B) of that Act can validate such process where the notice under Section 4(1a) of the 1948 Act did not lapse or was surviving on 31.3.1997.

30. The decision of the Hon'ble Full Bench in ***Sabita Mondal*** (supra) held that the effect of the Amendment Act of 1996 was that if any notice under Sub-Section 1(a) of Section 4 which have already been published on 31.03.1992 and the Collector had failed to pass any award thereon by 31.03.1995, those notices, would lapse; whereas in respect of notice issued after 31.03.1992, the award must be passed within three years from the date of publication of the notice under Sub-Section 1(a) of Section 4 with the further stipulation, that in default of passing of award within the time limit mentioned above, those notifications under Sub-Section (1a) of Section 4 would lapse. The Hon'ble Full Bench further held that in respect of those notices under Sub-Section 1(a) of Section 4 which were issued prior to 31.03.1992 and in respect of which no award had been passed by 31.03.1995 those notices have already lapsed and by the 1997 Amendment Act of the Land Acquisition Act by the West Bengal Legislature, no provision has been made for revival of the lapsed notice which stood lapsed already on 31.03.1997 for non-compliance of the provision of Amendment Act of 1996. It was further held that by the Amendment Act of 1997 only those notices under Sub-Section 1(a) of Section 4 which would have lapsed on the mid night of 31.03.1997 or on subsequent dates have been saved.
31. In the case on hand, this Court has already observed that the notice under Section 4(1a) of the 1948 Act stood lapsed prior to 31.03.1997. In other words, the notice under Section 4(1a) of the 1948 Act in the case on hand was not surviving on 31.3.1997. This Court therefore, holds that a notice under Section 9(3B) of the Act could not have validated the process of acquisition in the case on hand.
32. Mr. Datta would contend that upon issuance of notice under Section 4(1a) of the 1948 Act, the lands of the petitioner stood vested to the State in view of Sub-Section (2) of Section 4 of the 1948 Act. He further contended that the property which stood vested cannot be divested in the absence of any express provision in the 1948 Act in that regard.

33. In **Indore Development Authority** (supra), the Hon'ble Supreme Court reiterated the proposition of law laid down in *Satyendra Prosaid Jain vs. State of U.P.* reported at (1993) 4 SCC 369 wherein it was held as follows-

"15. Ordinarily, the Government can take possession of the land proposed to be acquired only after an award of compensation in respect thereof has been made under Section 11. Upon the taking of possession the land vests in the Government, that is to say, the owner of the land loses to the Government the title to it. This is what Section 16 states. The provisions of Section 11-A are intended to benefit the landowner and ensure that the award is made within a period of two years from the date of the Section 6 declaration. In the ordinary case, therefore, when Government fails to make an award within two years of the declaration under Section 6, the land has still not vested in the Government and its title remains with the owner, the acquisition proceedings are still pending and, by virtue of the provisions of Section 11-A, lapse. When Section 17(1) is applied by reason of urgency, Government takes possession of the land prior to the making of the award under Section 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly, Section 11-A can have no application to cases of acquisitions under Section 17 because the lands have already vested in the Government and there is no provision in the said Act by which land statutorily vested in the Government can revert to the owner."

34. The Hon'ble Supreme Court in paragraph 142 of reports held that once the land vests in the State, it cannot be divested, even if there is some irregularity in the acquisition proceedings.
35. The learned Advocate General sought to apply the aforesaid proposition of law to the case on hand.
36. In **Sabitri Devi** (supra) it was held that the expiry of time provided in Section 7A of the 1948 Act results in the lapse of notice under Section 4(1a) of that Act. After taking into consideration the fact that the 1948 Act which is a temporary statute stood effaced, the Co-ordinate Bench held that the vesting cannot continue on the lapse of notice under Section 4(1a) of the

1948 Act. The Co-ordinate Bench further held that Section 4(1a) postulates taking of possession by a Collector and in such a case the Collector may have taken possession under Section 3 of the 1948 Act. But such possession or vesting has to be a continuous one. It was held that the fictional possession under requisition and vesting with the issue of notice as contemplated under Section 4(1a) of the 1948 Act would continue for the purpose of Section 9(3B) of the 1894 Act only if the notice under Section 4(1a) under the 1948 Act remained valid on 31.03.1997. Such possession of the Collector for the purpose of acquisition could not be continued after the notice under Section 4(1a) of the 1948 Act stood lapsed. It was held that with the lapse of notice under Section 4(1a) of the 1948 Act by reason of Section 7A of that Act the vesting also cannot continue. It was further held that the possession of the Collector on the issue of notices under Section 4(1a) of the 1948 Act is a fictional possession or a symbolic or a notional possession different from the possession under Section 3 of that Act. The Co-ordinate Bench further noted that Sections 16 and 17 of the 1894 Act postulates symbolic possession. It was further held that the possession contemplated under the 1948 Act cannot be equated with that under 1894 Act.

37. In **Sabitri Devi** (supra), the effect of taking over possession either under Section 16 or Section 17 of the 1894 Act was considered in details and it was held that the principle with regard to taking of possession and the implication of Section 11A of the 1894 Act cannot be borrowed in respect of Section 4(1a) of the 1948 Act as the scheme of the two Acts are completely different. The Coordinate Bench held thus-

"28. The principle that once possession is taken the acquisition is compulsory, flows from section 48 of the 1894 Act. The possession of 1894 Act is taken either section 17 or under section 16. Thus, even though section 11A prescribes lapse of the proceeding unless award is made within the time limited, does not apply to cases where possession is taken. Under the 1948 Act the taking of possession has a different characteristics. Such possession does not confer title of the property to or upon the Government. The title continues with the owner. The Government can only

use the property. By reason of section 4(1a) of 1948 Act land can be sought to be acquired under the 1948 Act. The proceedings is altogether different from the one contemplated under the 1894 Act. Section 7A introduced in 1948 Act through 1996 W.B. amendment prescribed lapse of proceedings despite the requisition having ended and the property having vested in the State. Inasmuch as 1948 Act does not contain any provision similar to that of section 48 of 1894 Act. Thus, the impact or implication of the provision of section 4(1a) of 1948 Act has to be read in the context different from the 1894 Act in view of section 7A incorporated therein by 1996 Act. Whereas section 11A is to be read in the context of section 48 of 1894 Act. The possession that is taken either under section 17 or under section 16 are altogether for different purpose. Such possession confers title to the property upon the Government. Title, then, does not continue with the owner. Under section 4(1a) of 1948 Act no possession is taken. It is by fiction the property vests in the Government on the issue of such notice. But by reason of section 7A of 1948 Act such vesting has been made subject to lapse on the expiry of the period and happening of the contingency contemplated in section 7A. Therefore, the principle with regard to taking of possession and the implication of section 11A of 1894 Act, thereof, cannot be borrowed in respect of section 4(1a) of 1948 Act. The scheme of the two Acts are altogether different.

29. Then again section 16 postulates taking of possession only after the award is made. The vesting takes place on the taking of possession. Thus, unless the award is made the possession cannot be taken and the property can not vest in the Government under section 16. Under section 4(1a) of 1948 Act no question of award before taking possession is contemplated. Once possession is taken after the award under section 16 of 1894 Act by reason of section 48 the Government cannot withdraw from the acquisition. But then in such a case section 11A has no manner of application since it postulates declaration of award, only after which, section 16 comes into play. The exception to section 11A where award has not been declared within the time stipulated flows from section 17 of 1894 Act. Where there are urgency the Collector may take possession even before the award is declared. But such possession can be taken only after expiry of 15 days from publication of notice under section 9(1) of 1894 Act. Without such notice section 17 cannot be resorted to for the purpose of taking possession. Publication of notice under section 9(1) of 1894 Act is a pre-condition for taking possession under section 17. Sub-section (3A) of section 17 of 1894 Act postulates tendering of 80% of compensation as estimated before taking possession. Thus, the possession under section 17 has an effect or semblance of an award in the form of an estimation of compensation, 80% of which is to be tendered before taking possession. Thus, there is not much difference in the taking of possession either under section 16 or under section 17 of 1894 Act in respect of the principle that before taking possession compensation is to be secured. Under section 16 of 1894 Act by passing an award the compensation is secured. Whereas under section 17 of 1894 Act by tendering 80% of estimated compensation

before taking possession stands almost in the same footing. Whereas section 4(1a) of 1948 Act does neither contemplate of taking possession after declaration of award nor tendering of 80% or any part of the compensation. Such vesting, therefore, under section 4(1a) of the 1948 Act having been made subject to section 7A of that Act the question of vesting contemplated under the said provision stands altogether on a different footing. In the absence of any provision in the 1948 Act similar to those of section 48 of the 1894 Act, the Government is free to withdraw from acquisition sought to be made under section 4(1a) of the 1948 Act.

Then again section 48A of the 1894 Act as amended in West Bengal and certain other States provides for a provision of countervailing. Section 48A postulate payment of damages suffered by the owner in consequence of the delay in declaring the award while calculating compensation under section 23 in a proceedings under 1894 Act. The delay is also one of the factor for which damages are to be included in the award. Thus, the owner of the land is adequately protected. It is these reasons for which section 11A was made non-applicable in a case where possession is taken under section 17 of 1894 Act.

30. Whereas compensation is calculated in respect of acquisition under section 4(1a) of 1948 Act under section 7 of that Act. Section 7 of 1948 Act was a complete code in itself. The compensation though is to be calculated in the manner provided under section 23 of 1894 Act yet it has to be confined within the scope and ambit as are provided in section 7 of the 1948 Act. Section 48A of the 1894 Act would not be attracted when section 23 of that Act is resorted to for the purpose of calculation of compensation under section 7 of the 1948 Act. In the absence of any provision similar to section 48A of 1894 Act in section 7 of 1948 Act such benefit cannot be available in an award made under section 7 of the 1948 Act. On the other hand though possession is taken the title to the property remains with the owner. With the issue of notification under section 4(1a) of the 1948 Act without the tendering of 80% of estimated compensation as contemplated in, under section 17(3A) of the 1894 Act and without being countervailed under section 48A of that Act, the vesting that takes place under section 4(1a) of 1948 Act could not be equated with that contemplated under section 16 or 17 of the 1894 Act. Thus, section 7A of 1948 Act cannot be treated to be at par with section 11A of 1894 Act in relation to section 4(1a) of 1948 Act, though possession continues with the Government.

31. Therefore, the principle of exception to section 11A of 1894 Act is not applicable in such a case. As such this expiry of time provided in section 7A of 1948 Act results in the lapse of the notice under section 4(1a) of that Act. This again is to be considered having regard to the fact that the 1948 Act, a temporary statute, stood effaced. The vesting, therefore, cannot continue on the lapse of the notice under section 4(1a) of 1948 Act."

38. The proposition of law laid down by the Hon'ble Supreme Court in **Indore Development Authority** (supra) that the property once vested cannot be divested was while considering the provisions of the 1894 Act and the Right to Fair Compensation Act: In **Sabitri Devi** (supra) it has been elaborately discussed as to why the nature of possession contemplated under Section 3 and 4 (1a) of the 1948 Act cannot be equated with that of Sections 16 and 17 of the 1894 Act. This Court is, therefore, not inclined to accept the contention of Mr. Datta that the property in question stood vested upon issuance of notice under Section 4(1a) and thus, the same cannot be divested.
39. In the impugned order dated 16.02.2015 it was observed that though the award could not be passed during the lifetime of Act II of 1948, but the same was revived under the provision of Amendment Act of 1996 and read with Amendment Act of 1999 by issuing notices under Section 9(3B). This Court has already held that the notice under Section 4(1a) stood lapsed on 31.03.1995 and, therefore, the question of reviving the lapsed proceedings by issuing a notice under Section 9(3B) does not arise in view of the law laid down in **Sabitri Devi** (supra) and **Sabita Mondal** (supra). The observation made in the impugned order dated 16.02.2015 is contrary to the well settled proposition of law laid down in the aforesaid reports.
40. In **Sabitri Devi** (supra) it has been held that vesting cannot continue on the lapse of notice under Section 4(1a) of the 1948 Act. In the case on hand the notice under Section 4(1a) of the 1948 Act stood lapsed on 31.03.1995. Therefore, the vesting cannot continue after 31.03.1995.
41. In **Mandodari Bhakat** (supra), the Hon'ble Division Bench held that upon lapsing of notice issued under Section 4(1a) in view of Section 7A of the 1948 Act, the title of the original owner revives.

42. This Court, therefore, holds that the title of the vendors of the petitioner in respect of the property revived upon lapsing of notice under Section 4(1a) on 31.03.1995.
43. It is not in dispute that the petitioners purchased the lands which were the subject matter of the present land acquisition case from the erstwhile owners after 31.03.1995. Therefore, the petitioners cannot fall within the category of “post vesting transferees”.
44. There is, however, no quarrel to the proposition of law laid down by the Hon’ble Supreme Court in ***Star Wire (supra)***, ***Narendra Kumar Jain (supra)***, ***Shiv Kumar (supra)*** and ***Damini Wadhwa (supra)***. The said decisions do not have any manner of application to the case on hand in view of the observations made hereinbefore.
45. This Court has already observed that the vendors of the petitioners had the title to the property in question at the time of transfer of such properties in favour of the petitioners. In view thereof, this Court is not inclined to accept the contention of the learned Advocate General that the documents of transfer are void instruments.
46. For the reasons as stated hereinbefore, the observation made in the impugned order dated 16.02.2015 to the effect that the petitioners are post vesting purchasers and therefore, they are not entitled to challenge the land acquisition proceedings cannot be sustained in law.
47. In the case of ***Bankra Nagarik Forum & Ors. vs. The State of West Bengal & Ors.***, the land acquisition case no. 25 of Act II (84-85) was in issue whereas the petitioners are concerned with LA Case No. 26 & 29 of Act II (86-87). In view thereof the findings in the case of ***Bankra Nagarik Forum*** (supra) do not have any manner of relevance to the case on hand.
48. It is not the case of the respondents that the lands in question have not been utilised for public purpose. The possession taken on requisition could not have been continued after 31.03.1997 as it has already been held that

the notice under Section 9(3B) could not have validated the acquisition. Therefore, the award made on 11.10.2004 assessing the valuation of the lands as on the date of issuance of notice under Section 4(1a) is non-est in the eye of law. The 1894 Act stood repealed in the meantime and the 2013 Act has come into force with effect from 01.01.2014. It is well settled that if the State is not in a position to release the land in favour of the land owners, a direction should be passed to take steps and to conclude the acquisition proceeding and pay compensation in accordance with law.

49. For all the reasons as aforesaid the impugned order dated 16.02.2015 stands set aside. It is declared that the lands of the petitioners being plot Nos. 1447, 1446, 1445, 1441, 1443, 1328, 1332, 1442, 1444 and 1371 of Mouja Pakuria GL No. 54 which were subject matter of LA Case No. 26/Act II of 1986-87, 29/Act II/86-87 and 29/1/Act II/86-87 are free from acquisition proceedings. The respondent authorities are directed to initiate fresh acquisition proceedings in accordance with law and to conclude the same within a period of three months from the receipt of the server copy of this order failing which the respondent authorities are directed to deliver possession of the lands to the lands in question to the writ petitioners. The writ petition stands allowed. Consequently, all applications arising out the writ petition also stands disposed of. There shall be however no order as to costs.
50. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)

Later

51. Mr. Bera further submits that FMA 2421 of 2008 at the instance of KMDA has been disposed of. He further submits that WPA 15608 of 2004 has also been disposed of. The submission of Mr. Bera is placed on record. In view thereof, no further order is required to be passed in WPA 15608 of 2004 and FMA 2421 of 2008.

(Hiranmay Bhattacharyya, J.)

(P.A.-Sanchita, Rinki)