

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

Present:

The Hon'ble Justice Partha Sarathi Sen

WPA 16533 of 1989

**Srimatya Anita Maity & Anr.
Vs.
State of West Bengal & Ors.**

For the petitioners : Mr. S. Biswas
Mr. A. K. Gayen
Ms. A. A. Gayen
Mr. M. Mukhopadhyay

For the State : Mr. T. M. Siddiqui, A.G.P.
Mr. Suddhadev Adak

For the respondent No. 4 : Mr. Nirmalendu Bera
Mr. Gora Chand Samanta
Ms. Sunanda Samanta

Heard on 15.01.2025

Judgment on : 15.01.2025

PARTHA SARATHI SEN, J.:

1. By filing the instant writ petition the writ petitioners have prayed for issuance of appropriate writ/writs against the respondent authorities for not giving effect to the notices in connection with

LAP Case No. 3 of 1982-83 which have been annexed with the instant writ petition with the mark Annexures – ‘A’ and ‘G’ with a further prayer for declaring the land acquisition proceeding as initiated by the respondent authorities as wrong, illegal and without jurisdiction.

2. In course of his submission Mr. Gayen, learned Advocate for the writ petitioners at the very outset draws attention of this Court to the order dated 25.03.1992 as passed in connection with this case by a co-ordinate Bench whereby and whereunder the instant writ petition was dismissed. Attention of this Court is also drawn to the order dated 19.08.1993 as passed by a Division Bench of this High Court in FMAT 63 of 1993 wherein the said order dated 25.03.1992 was set aside and the instant writ petition was remanded back for adjudication afresh. It is further submitted on behalf of the writ petitioners that such remand is in the nature of an open remand.
3. Mr. Gayen in course of his argument at the very outset draws attention of this Court to Annexures – ‘A’ and ‘G’ to the instant writ petition being copies of the notice of LAP Case No. 3 of 1982-83. Attention of this Court is drawn to Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the ‘said Act of 1894’). It is submitted by Mr. Gayen that it is an admitted position that the aforesaid two notices were published only in one

newspaper which is contrary to the provision of Section 4 of the said Act of 1894 and, therefore, on this ground alone the aforesaid two notices preceding the land acquisition proceeding may be quashed. It is further submitted by Mr. Gayen that on perusal of Section 4 of the said Act of 1894 it would reveal that the legislative intent to publish the said notice under Section 4 of the said Act of 1894 is mandatory in nature and is not directory.

4. In his next fold of submission Mr. Gayen draws attention of this Court to Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the 'said Act of 2013'). It is submitted by Mr. Gayen that in view of the provision of Section 24 Sub-Section (2) of the said Act of 2013 in the event an award under Section 11 of the said Act of 1894 has been made five years or more prior to the commencement of the Act of 2013 but the physical possession of the land has not been taken or the compensation has not been paid the land acquisition proceeding as initiated under the provision of the said Act of 1894 shall be deemed to have been lapsed.
5. It is thus contended by Mr. Gayen that from the materials as placed before this Court it would reveal that though a declaration under Section 6 of the said Act of 1894 was issued but neither the possession of the land in question was taken nor any

compensation has been disbursed and, therefore, there cannot be any hesitation to hold that the land acquisition proceeding as proposed to be initiated under the aforementioned two notices under challenge may be declared as lapsed and appropriate relief may be granted to the writ petitioners in accordance with the prayers made in the writ petition.

6. *Per contra*, Mr. Siddiqui, learned Senior Advocate duly assisted by Mr. Adak, learned Advocate for the State at the very outset draws attention of this Court to the pleadings and prayers as made in the writ petition. It is submitted by Mr. Siddiqui that within the four corners of the said writ petition there is no averment on the part of the writ petitioners that after issuance of the notices under challenge the respondent authorities have not taken possession of the acquired land. It is further submitted by Mr. Siddiqui, learned Senior Advocate that though in the prayer of the writ petition, the writ petitioners have prayed for quashing of the land acquisition proceeding but the same is not at all justified one. It is further submitted by him that during the pendency of the instant writ petition the writ petitioners have never come forward with any supplementary affidavit stating *inter alia* that neither the possession of the acquired land has been taken by the requiring body nor the compensation has been paid to the writ petitioners by the acquiring body.

7. It is thus argued by Mr. Siddiqui, learned Senior Advocate that in absence of any specific pleading on the part of the writ petitioners the respondents/State authorities had no opportunity to deal with the argument regarding not taking possession and/or non-disbursement of compensation since such points have been taken at the time of hearing only.
8. It is further submitted by Mr. Siddiqui, learned Senior Advocate that after publication of the declaration under Section 6 of the said Act of 1894 the property in question has been acquired and the same has been handed over to the respondent/School being the requiring body and the same is now being used as school's playground for a considerable length of time.
9. Mr. Bera, learned Advocate appearing on behalf of the respondent No. 4/school while adopting the argument of Mr. Siddiqui contends before this Court that from the affidavit-in-opposition as filed on behalf of the respondent No. 4/school it would reveal that land acquisition proceeding has been completed long back and the school authority is using the same for its playground.
10. In his next fold of submission Mr. Bera draws attention of this Court to the order dated 04.04.2017 as passed by a co-ordinate Bench of this Court in WP 7798 (W) of 2015 wherein it has been observed by the said Court that in LAP Case No. 3 of 1982-83 acquisition of land for construction of playground of respondent

school has been completed and award under Section 11 of the said Act of 1894 was declared on August 6, 1993. It is thus submitted by Mr. Bera that the writ petitioner is not entitled to the relief as prayed for.

11. In his reply Mr. Gayen, learned Advocate appearing on behalf of the writ petitioners, however, contends that the finding of a co-ordinate Bench in WP 7798 (W) of 2015 has got no relevance since the writ petitioners were not the party to the said proceeding.
12. This Court has minutely gone through the materials as placed before this Court by the contending parties. This Court has given its due consideration over the submissions of the learned Advocates.
13. For effective adjudication of the instant *lis* some provisions of Act of 1894 and Act of 2013 are required to be looked into since the learned Advocate for the writ petitioners in course of his argument heavily placed his reliance upon the said provisions of the aforementioned two Acts.
14. Section 4 of the said Act of 1894 is as under:

“4. Publication of preliminary notification and powers of officers thereupon-(1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, or for a company a notification to that effect shall be published in the official Gazette, and in two daily

newspapers circulating in that locality of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification).

(2)”

15. Section 24 of the said Act of 2013 is as under:

“24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.-

(1)

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said

Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

16. On perusal of Section 4 of the said Act of 1894, it appears to this Court that it is the legislative mandate that a notification under Section 4 of the said Act of 1894 is to be published in two daily newspapers having circulation in the locality where the proposed acquisition is going to be made.
17. As discussed supra, in course of his argument, Mr. Gayen contended that it is undisputed that the aforementioned two notices under challenge have been published only in one newspaper instead of two newspapers and, therefore, the aforementioned two notices may be held to be invalid since the same is violative of Section 4 of the said Act of 1894.
18. In considered view of this Court though Section 4 of the said Act of 1894 mandates publication of the notice under the said section in two newspapers, the aforesaid two notices being Annexures – ‘A’ and ‘G’ cannot be held to be invalid, in view of the fact that it is not the case of the writ petitioner that he has not received the said notice of Section 4 of the said Act of 1894 prior to initiation of land acquisition proceeding. In considered view of this Court, while enacting Section 4 of the said Act of 1894, the legislatures intended for publication of the said notice in two newspapers having circulation in the locality for the reason that the people

who are going to be affected by the proposed acquisition must have knowledge regarding such acquisition. Since in the case in hand, the writ petitioner has already been served with the notice, the writ petitioner, in considered view of this Court, cannot be permitted to take advantage of non-publication of the said notice in the another newspaper.

19. This Court thus considers that the contention of the writ petitioner in this regard has got no leg to stand upon and is thus not accepted by this Court.
20. Admittedly, the instant writ petition was filed in the year 1989 and at that material time, the Act of 2013 was not in force since the Act of 2013 was brought into effect on 01.01.2014. On behalf of the writ petitioner, it has been contended before this Court that pursuant to the said notice under Section 4 of the said Act of 1894 though publication of declaration under Section 6 of the said Act of 1894 was made but the physical possession of the land in question was never taken and/or compensation for the alleged acquisition was not disbursed to the writ petitioner.
21. As rightly pointed out by Mr. Siddiqui, learned Senior Advocate appearing for the State that the writ petitioner had an ample opportunity to urge this point after 01.01.2014 by filing a supplementary affidavit. Admittedly, no such supplementary

affidavit has been filed, even no leave was sought for from this Court to file any such supplementary affidavit.

22. In view of such, this Court considers that it would be unjust that if such plea is permitted to be taken at the stage of hearing as it would cause serious prejudice to the respondents/authorities as well as to the respondent/School.
23. On perusal of the copy of the certified copy of the order dated 04.04.2017 as passed in WP 7798 (W) of 2015, it appears to this Court that a co-ordinate Bench in the said writ petition (though in the said writ petition the writ petitioner was not a party) came to a categorical finding that in respect of LAP Case No. 3 of 1982-83 (which is also the subject matter of the instant writ petition) the award under Section 11 of the said Act of 1894 was declared on 06.08.1993 which clearly indicates that the acquisition proceeding has come to an end by taking possession of the acquired land and thus award of compensation has been passed.
24. Though such finding is disputed on behalf of the writ petitioner on the ground that the writ petitioner was not a party to the said writ petition, this Court considers that judicial discipline expects that an earlier decision of a co-ordinate Bench is binding upon the later unless the later Bench intends to take a contrary view and in that event, the duty is cast upon the later Bench to refer the

matter to the Hon'ble Chief Justice for placing before a larger Bench.

25. In view of the discussion made hereinabove, this Court thus finds no merit in the instant writ petition.
26. Accordingly, the instant writ petition being **WPA 16533 of 1989** is thus dismissed.
27. There shall, however, be no order as to costs.
28. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(PARTHA SARATHI SEN, J.)