

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

MAT 178 of 2024
With
CAN 2 of 2024
West Bengal Industrial Infrastructure
Development Corporation
Vs.
Smt. Dropadi Devi Bhagalewala & Ors.

For the Appellants	:Mr. Pratik Dhar. Sr. Adv. Mr. Amit Kumar Nag, Adv. Mr. Partha Banerjee, Adv.
For the Respondent: No. 1	Mr. Saktinath Mukherjee, Sr. Adv. Mr. Arit Ali, Adv. Mr. Sarban Bhattacharjee, Adv.
For the State	Mr. Chandi Charan De, Ld. Addl. G.P., Mr. Anirban Sarkar, Adv.
Hearing Concluded on	: June 17, 2025
Judgement on	: July 16, 2025

DEBANGSU BASAK, J.:-

1. Appellant has assailed the judgment and order dated December 08, 2023 passed in WPA 18345 of 2017 by learned Single Judge.
2. Learned Senior Advocate appearing for the appellant has contended that, the learned Single Judge erred in

entertaining the writ petition. He has contended that, there was unexplained delay of 30 years from the date on which the writ petitioner has claimed to become owners of the land, in filling a writ petition assailing the acquisition proceedings.

3. Learned Senior Advocate appearing for the appellant has contended that, the first writ petition filed by the writ petitioner was dismissed for default and the writ petitioner did not take any steps on the restoration of the same. Thereafter, the writ petitioners after a lapse of 4 years, filed a fresh writ petition, seeking quashing of proceedings initiated under the provisions of the West Bengal Land (Requisition and Acquisition) Act, 1944.

4. Learned Senior Advocate appearing for the appellant has contended that, possession of the land was taken on February 20, 1987 and that, an award was passed on September 19, 1995 with the compensation being deposited on October 11, 1995. He has relied upon **2020 Volume 8 Supreme Court Cases 129 (Indore Development Authority vs. Manoharlal and Others)** in support of the contention that, the land stood vested with the State and therefore, the same cannot be divested.

5. Learned Senior Advocate appearing for the appellant has relied upon ***All India Reporter 1972 Cal 8 (Mihir Kumar Sarkar and Others vs. State of West Bengal and Others)*** as the quality of a notice under Section 3 of the Act of 1948. He has relied upon ***2019 Volume 10 Supreme Court Cases 29 (Savita vs. State of Delhi)*** for the proposition that sale of land after issuance of notification under section 4 of the Act of 1894 is void.

6. Learned Senior Advocate appearing for the appellant has contended that, under the scheme of the Act of 1894, a notice under Section 4 thereof, exhibits the intention of the State to acquire a property. Thereafter, the declaration under Section 6 of the Act of 1894 confirms that the State requires the land. Section 9 and Section 16 of the Act of 1894 provides a mechanism for notice to be issued to the interested parties inviting claims and objection and an award being passed. He has submitted that, on an award being passed and possession being taken, the land stands vested with the State absolutely.

7. Referring to the provisions of the Act of 1948 learned Senior Advocate for the appellant has submitted that Section 3 thereof, prescribes the State taking preliminary control over

the land. A notice under Section 4(1) of the Act of 1948 specifies the intention of the State Government to acquire the land. Publication under Section 4(2) of the Act of 1948 specifies the immediate and absolute vesting of the land free from encumbrances. He has contended that provision of Section 3 of the Act of 1948 equals to Section 4(1) of the Act of 1894 as, both represent the first public notice asserting the intention of the Government to take over the land and in fact taken preliminary control of the land. He has contended that, issuance of notice under Section 3 of the Act of 1948 is a constructive notice to subsequent purchaser.

8. Learned Senior Advocate appearing for the appellant has contended that, Section 4 of the Act of 1948 is a summation of the provisions of Section 6, 9 and 16 of the Act of 1894. He has contended that, Section 4 consolidates the final acquisition notice, invites and provides for absolute vesting. A notice under Section 4 of the Act of 1948 is also a statutory bar against a challenge being levelled by a subsequent purchaser.

9. Referring to the facts of the present case learned Senior Advocate appearing for the appellant has contended

that notice under Section 3 of the Act of 1948 was issued on January 15, 1987. The writ petitioner claimed to have purchased the property on January 19, 1987. The writ petitioner, therefore, being a subsequent purchaser to the notice under Section 3 of the Act of 1948, has no locus standi to challenge the requisition or the acquisition proceedings.

10. Learned Senior Advocate appearing for the writ petitioner has contended that, there is no question of treating the writ petitioner as a subsequent purchaser since the land in question never stood vested with the State.

11. Learned Senior Advocate for the writ petitioner has relied upon **(2011) 3 CHN 555 (State of West Bengal vs. Sabita Mondal)** for the proposition that, there is a lapse of the proceedings initiated under the Act of 1948 in view of the award not being published within the time frame stipulated under Section 7A of the Act of 1894.

12. Learned Senior Advocate appearing for the writ petitioner has relied upon **(2015) 10 SCC 241 (Laxmi Devi vs. State of Bihar & Ors.)** on the proposition that there must be a valid award under the Act of 1894 for the vesting to take

place. He has also relied upon **(2002) 1 Cal LT 278 (Lila Deb Chowdhury vs. State of West Bengal & Ors.)**

13. The writ petitioners had filed the writ petition resulting in the impugned judgment and order in respect of land measuring 1.07 acres comprising in Plot nos. 1117/1203, 1118, 1119 in Mouza Jadupurs District Malda.

14. Writ petitioners have claimed right, title and interest in respect of the 3 plots of land comprised of an area of about 1.10 acres by virtue of 3 registered deeds all dated January 19, 1987.

15. In respect of these 3 plots, State had issued a notice under Section 3 of the Act of 1948 on January 15, 1987. State had claimed that it took possession of the land on February 20, 1987. State had issued a notice under Section 4(1a) of the Act of 1948 on February 2, 1990. State has claimed that an award was published on September 19, 1995 and compensation deposited on October 11, 1995. Appellant has claimed itself to be the beneficiary of the acquisition and put in possession of the land by the State.

16. By the amendment of 1996, Section 7A was introduced to the Act of 1948 which is as follows:-

“7A. Award by Collector. – The Collector shall make an award under sub-section (2) of section 7 within a period of three years from the date of publication of the notice in the Official Gazette under sub-section (1a) of section 4 (hereinafter referred to as to said notice), and if such award is not made within the period as aforesaid, the said notice shall lapse:

Provided that in a case where the said notice has been published more than two years before commencement of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1994 (West Ben. Act XIV of 1994), the award shall be made within a period of one year from the date of commencement of that Act.

Explanation.-In computing the period of three years or one year, as the case may be, under this section, the period during which any action or proceeding to be taken in pursuance of the said notice is stayed by an order of a Court having jurisdiction, shall be excluded.”

17. Section 7A of the Act of 1948 has mandated the publication of the award in respect of the proceedings initiated under the Act of 1948. It has segregated the time limit for publication of the award into two categories. It has granted 3 years to publish the award for notices issued under Section 4(1a) of the Act of 1948 which is the first category. However, in the proviso it has dealt with the second category, which is a notice under Section 4(1a) of the Act of 1948 issued more than two year from the commencement of the Amendment Act of 1994. In the second category, it has allowed one year time to

publish the award from the commencement of the Amendment Act of 1994, that is, March 31, 1994.

18. Section 7A of the Act of 1948 has stipulated that if the award under sub-section (2) of Section 7 of the Act of 1948 is not made within the period as aforesaid the notice shall lapse.

19. Explanation to Section 7A has stipulated that, in computing the period of three years or one year, the period during which any action or proceeding to be taken in pursuance of the notice under Section 4(1a) of the Act of 1948 is stayed by an order of the jurisdictional Court then such period shall be excluded.

20. Therefore, under the proviso to Section 7A of the Act of 1948, in case of a notice under Section 4(1a) of the Act of 1948 being published 2 years prior to March 31, 1994, being the date of commencement of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1994, the award has to be published on or before March 31, 1995, if the scenario stipulated in the Explanation did not occur.

21. ***Sabita Mondal (supra)*** has held that, notices given prior to March 31, 1992 stood lapsed if award was not published within one year from March 31, 1994. In the facts

and circumstances of the present, notice under Section 4(1a) of the Act of 1948 had been issued on February 02, 1990 and the award published beyond March 31, 1995, that is, on September 19, 1995. Consequently the notice under Section 4(1a) of the Act of 1948 had lapsed on March 31, 1995. Nothing has been placed on record to establish the period of time to make and publish the award stood extended by virtue of any order of any Court in terms of the Explanation of Section 7A of the Act of 1948.

22. The ratio **of Indore Development Authority (Lapse 5) (supra)** does not apply to the facts and circumstances of the present case since the vesting did not take place in accordance with law of the State. It did not consider the provisions of the Act of 1948 as the same did not fall for consideration. **Sabita Mondal (supra)** is a binding authority and is squarely applicable to the facts and circumstances of this case.

23. **Sabita Mondal (supra)** dwelt on a situation where the land acquired was transferred after issuance of the notice under Section 4 of the Act of 1984. It has held that such transfer is void. Ratio laid down therein is not attracted

herein, inasmuch as, the acquisition was sought to undertake under the Act of 1948 which is not *pari materia* with the provisions of the Act of 1894. In any event, Section 7A of the Act of 1948 has provision for the lapse of the notice under Section 4(1a) upon failure to publish award within stipulated time, which is the case at hand.

24. *Laxmi Devi (supra)* has held that, if an award is not made within the statutory period, the relief may be granted to the land owner and that, the acquisition proceedings may be set aside with direction to initiate fresh acquisition proceedings and for the payment of compensation. Once land stands vested with the State, the same cannot be directed to be returned to the original land owner.

25. *Shiv Kumar & Anr. (supra)* has held that a purchaser after a notification under Section 4 of the Act of 1948 could not challenge the land acquisition proceedings on any ground whatsoever.

26. In the facts and circumstances of the present case, the initial requisition proceedings were initiated under the Act of 1948 and not under the Act of 1894. Act of 1948 being as temporary statute, proceedings initiated therein were

mandated to be transferred to the Act of 1894 by virtue of migration mechanism provided under the two statutes.

27. *Mihir Kumar Sarkar & Ors. (supra)* has held that, there was no requirement of giving of a prior notice for requisition under the Act of 1948. It has also noted the time gap between the Act of 1894 and the Act of 1948. It has, therefore, held that the changes made in the Act of 1948 were in contrast to the provision of the Act of 1894. It has highlighted the contrast between the two Acts. In view of such reasoning of the Co-ordinate Bench as tabulated in ***Mihir Kumar Sarkar & Ors. (supra)*** with regard to the contrast and distinction between the Acts of 1948 and 1894, the plea that, provisions of Section 3 of the Act of 1948 is equal to Section 4(1) of the 1894 Act or Section 4 of the 1948 Act is equal to Sections 6, 9 and 16 of the Act of 1894 cannot be accepted. Independent of the Co-ordinate Bench decision, the provisions of the two Acts are not *pari materia* to arrive at such a finding.

28. In the facts of the present case, the State did not avail of the migratory provisions available in the Act of 1948 and the Act of 1894 to make and publish a valid award within the

time period stipulated in such mechanism. Consequently, the entire acquisition proceedings, stood lapsed in view of the provisions of Section 7A of the Act of 1948. Resultantly, title to the land of the original owner revived. Therefore, any transfer subsequent to the first notice under the Act of 1948 cannot be held to be barred by law.

29. In such circumstances, we find no merit in the present appeal. MAT 178 of 2024 along with all connected applications are disposed of without any order as to costs.

[DEBANGSU BASAK, J.]

30. I agree.

[MD. SHABBAR RASHIDI, J.]