

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

Present:

The Hon'ble Justice Partha Sarathi Sen

WPA 2882 of 2023

Lakshmi Rani Dinda & Ors.

Vs.

The Union of India & Ors.

For the petitioner : Mr. Tanmoy Mukherjee
Mr. Bhaskar Ch. Manna

For the State : Mr. Sk. Md. Galib, Sr. Govt. Adv.
Mr. Kapil Guha

For the respondent nos. 1 : Mr. Brajesh Jha
to 4 : Mr. Rahul Sarkar
Ms. Dipika Sarkar

Heard on : 01.07.2025

Judgement on : 01.07.2025

PARTHA SARATHI SEN, J.:

1. The subject matter of the instant writ petition is the order dated 24.11.2022 as passed by the respondent no. 2/authority whereby and whereunder the said respondent no. 2/authority declined to consider the representation of the writ petitioners for disbursement of compensation on account of acquisition of land

of their predecessor-in-interest as well as for grant of land loser certificate favourably.

2. It is pertinent to mention herein that the respondent no. 2/authority passed such reasoned order under challenge pursuant to the judgment and order dated 05.09.2022 as passed by a co-ordinate Bench of this Court in WPA 19511 of 2021.
3. In course of hearing, Mr. Mukherjee, learned advocate appearing on behalf of the writ petitioners at the very outset draws attention of this Court to the order under challenge dated 24.11.2022. Attention of this Court is also drawn to Page Nos. 6 and 7 of the supplementary affidavit being copies of two representations dated 09.01.2012 and 16.01.2012 as submitted by the writ petitioners.
4. It is submitted by Mr. Mukherjee that from the copies of the said two representations dated 09.01.2012 and 16.01.2012, it would reveal that the writ petitioners brought to the notice of the competent authority i.e., the respondent no. 4/authority herein that the present writ petitioners are also the legal heirs of their predecessor-in-interest, Lal Mohan Bera (since deceased) apart from their brothers to whom the railway authority has disbursed compensation on account of acquisition of land of their

predecessor-in-interest and also allegedly issued land loser certificate.

5. In his next limb of submission, Mr. Mukherjee draws attention of this Court to the gazette notification as published on or before 18.05.2011 as has been relied upon by the respondent no. 2/authority in his said reasoned order dated 24.11.2022. It is submitted by Mr. Mukherjee that Clause 20H(4) of the said gazette notification mandates that in the event any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.
6. It is submitted by Mr. Mukherjee that from the materials as placed before this Court, it would reveal that the railway authority without given due adherence to the said provisions disbursed the admissible amount of compensation to the sons of the original recorded owner i.e., Lal Mohan Bera depriving the present writ petitioners who are the daughters of the deceased, Lal Mohan Bera.
7. It is thus submitted by Mr. Mukherjee that while passing the order under challenge dated 24.11.2022, the respondent no.

2/authority has failed to visualize the true spirit of Clause 20H(4) of the said notification and thus, wrongly came to a finding that the representation of the writ petitioners had got no merit.

8. It is thus submitted by Mr. Mukherjee that appropriate relief/reliefs may be granted to the writ petitioners in terms of the prayers made in the instant writ petition thereby directing the respondents/authority to disburse the proportionate amount of compensation in favour of the writ petitioners vis-à-vis issuance of land loser certificate to them.
9. Per contra, Mr. Jha, learned advocate appearing on behalf of the respondent nos. 1 to 4 i.e., Union of India and its instrumentalities, in course of his submission draws attention of this Court to the report in the form of affidavit as has been affirmed on 19.02.2024. It is submitted that from the report, it would reveal that the basis of disbursement of compensation on account of acquisition by railway authority is either the document of ownership or the record of right.
10. It is further submitted by Mr. Jha that from the report as submitted before this Court, it would reveal that in terms of the provisions of the Railways Act, 1989 (hereinafter referred to as 'the said Act of 1989' in short) notification under Section 20F/4

of the said Act of 1989 was published in a local newspaper indicating the name of the father of the present writ petitioners who was the then recorded owner of the portions of the relevant plots of land.

11. It is further submitted by Mr. Jha that at the time of disbursement of compensation, the competent authority duly examined the documents of ownership and/or possession and, thereafter, the awardees have been disbursed with compensation as per their proportionate shares. It is further submitted by Mr. Jha that since at that material time, the names of the present writ petitioners were not recorded in the record of right and since, the writ petitioners have failed to represent before the competent authority to establish their alleged valid title and possession in support of their claim for compensation, the competent authority had no occasion to consider the alleged claim of the writ petitioners.
12. It is thus submitted by Mr. Jha that there is no illegality and/or irregularity in the order under challenge and thus the instant writ petition is thus liable to be dismissed.
13. Mr. Galib, learned senior government advocate appearing on behalf of the respondent/State adopts the argument of Mr. Jha.

14. On careful perusal of the entire materials as placed before this Court and after hearing the learned advocates for the contending parties, it appears to this Court that in the earlier round of litigation, the grievance of the writ petitioners was that the respondent no. 2/authority had not considered their representation dated 25.02.2021.
15. At the time of filing of the instant writ petition, the writ petitioners have not annexed any document showing their earlier representations before the respondents/authorities claiming their entitlement to compensation and/or land loser certificate on account of acquisition of land of their predecessor-in-interest. By way of supplementary affidavit as affirmed on 23.07.2024, two documents have been placed before this Court dated 09.01.2012 and 06.01.2012 regarding the claim of the writ petitioners for disbursement of proportionate compensation and land loser certificate.
16. However, from the report as filed by the railway authority, it becomes crystal clear that the writ petitioners have failed to represent before the competent authority with relevant documents in support of their claim for compensation at the material time.

17. For the sake of argument, even if, this Court accepts the contention of Mr. Mukherjee that in view of the provision of Clause 20H(4), the railway authority is duty bound to refer the matter for adjudication before the jurisdictional principal civil court of original jurisdiction, however, no material could be placed before this Court that what prevented the writ petitioners to approach this Court against the railway authorities for non-compliance of the aforementioned provision when the railway authority was contemplating disbursement of compensation to the recorded owners of the acquired land, more specifically, to the sons of the deceased Lal Mohan Bera.
18. From Page No. 31 of the instant writ petition, it would reveal that another co-ordinate Bench of this Court vide its judgment dated 19.06.2017 as passed in WP 17269 (W) of 2014 at the instance of the writ petitioners dismissed the said writ petition as premature with a liberty to the writ petitioners to approach this Court that if land of the petitioners is acquired without payment of compensation.
19. Admittedly, the writ petitioners before this Court have not availed such opportunity/liberty at the relevant point of time i.e., when the railway authority are contemplating to disburse

compensation in favour of the brothers of the writ petitioners pursuant to a valid process of acquisition.

20. In considered view of this Court, the writ petitioners have miserably failed to explain their delay and laches in approaching this Court, especially when disbursement has been done by the railway authority.
21. In the reported decision of ***Mrinmoy Maity Vs. Chhanda Koley*** reported in **2024 SCC Online SC 551**, the Hon'ble Supreme Court while dealing with the subject of delay and laches in approaching a writ Court held thus:

“11. For filing of a writ petition, there is no doubt that no fixed period of limitation is prescribed. However, when the extraordinary jurisdiction of the writ court is invoked, it has to be seen as to whether within a reasonable time same has been invoked and even submitting of memorials would not revive the dead cause of action or resurrect the cause of action which has had a natural death. In such circumstances on the ground of delay and laches alone, the appeal ought to be dismissed or the applicant ought to be non-suited. If it is found that the writ petitioner is guilty of delay and laches, the High Court ought to dismiss the petition on that sole ground itself, inasmuch as the writ courts are not to indulge in permitting such indolent litigant to take advantage of his own wrong. It is true that there cannot be any waiver of fundamental right but while

*exercising the discretionary jurisdiction under Article 226, the High Court will have to necessarily take into consideration the delay and laches on the part of the applicant in approaching a writ court. This Court in the case of **Tridip Kumar Dingal V. State of W.B., (2009) 1 SCC 768** has held to the following effect:*

56. We are unable to uphold the contention. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations is delay and laches on the part of the applicant in approaching a writ court. It is well settled that power to issue a writ is discretionary. One of the grounds for refusing reliefs under Article 32 or 226 of the Constitution is that the petitioner is guilty of delay and laches.”

22. This Court is respectful disagreement with the submission of Mr. Mukherjee that the railway authority is duty bound to further disburse the proportionate share of compensation in favour of the writ petitioners even at this stage.
23. With the aforementioned observations, the instant writ petition being **WPA 2882 of 2023** is dismissed.
24. There shall be, however, no order as to costs.

25. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

Sourav
A.R. (Court)

(Partha Sarathi Sen, J.)