

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

Present:

The Hon'ble Justice Partha Sarathi Sen

WPA 23317 of 2023

**Sudha Chatterjee & Ors
Vs.
The State of West Bengal & Ors.**

With

WPA 3669 of 2025

**Sudha Chatterjee & Ors
Vs.
The State of West Bengal & Ors.**

For the petitioners	:	Mr. Ayan Banerjee Mr. Dhiman Banerjee
For the State in WPA 23317 of 2023	:	Mr. Supratim Dhar, Sr. Adv. Ms. Kalpita Paul
For B.S.N.L.	:	Mr. Samajit Ghosh
Heard on	:	25.08.2025
Judgment on	:	25.08.2025

PARTHA SARATHI SEN, J.:

1. The writ petitioners, the respondents/State i.e. the respondent nos. 1 and 2 and respondent no. 3 i.e. the functionary of BSNL in WPA 23317 of 2023 are represented by their respective Counsels.

2. In WPA 3669 of 2025 the writ petitioners and the respondent no. 5 i.e. the functionary of BSNL authority are represented, however, none appears on behalf of the respondents/State and its instrumentalities i.e. respondent nos. 1 to 4 though on the earlier occasion Mr. Tarak Karan, learned Advocate appeared on behalf of the respondents/State.
3. By filing WPA 23317 of 2023 the writ petitioners have prayed for issuance of appropriate writ/writs against the respondents/authorities more specifically against the respondent no. 3/authority for recalculating the compensation and for payment of the same in respect of the petitioners' land measuring about 1.22 acre in LR plot no. 1419 under Mouza – Tarakeshwar, District – Hooghly under Act XXX of 2013 along with other ancillary reliefs.
4. In WPA 3669 of 2025 the writ petitioners have prayed for issuance of appropriate writ/writs against the respondents/authorities more specifically against the respondent no. 3 for quashing of the memo dated 29.11.2024 in view of lapse of LA proceeding being LA case no. 1-4/93-94 as well as notice under Section 9(3B) dated 15.02.2001 as published under Section 9(3B) of Act I of 1894 (West Bengal Amendment Act-I of 1997) along with further ancillary reliefs.
5. At the time of hearing, Mr. Ghosh, learned Advocate appearing on behalf of BSNL authority in both the writ petitions at the very outset draws attention of this Court to the judgment and order dated

19.02.2003 as passed by a co-ordinate Bench of this Court in WP 18458 (W) of 1998 wherein the predecessor in interest of the present writ petitioners is the writ petitioner. It is submitted by Mr. Ghosh that from the said judgment and order dated 19.02.2003 it would reveal that the said co-ordinate Bench while disposing the writ petition passed an order commanding the jurisdictional collector to refer the matter to the concerned Court for the purpose of disposal of the dispute as was involved in the said writ petition.

6. Mr. Ghosh submits that from the materials as placed before this Court it would reveal that neither the writ petitioners nor the respondents/State have resorted to the jurisdiction of the civil court in terms of the judgment and order dated 19.02.2003 and on the contrary the writ petitioners have come forward by filing the instant two petitions on the alleged two different causes of action praying for the reliefs as mentioned in the prayer portions of the instant two petitions. It is submitted by Mr. Ghosh that since the order and judgment of the co-ordinate Bench as passed on 19.02.2003 has reached its finality on account of non-filing of any appeal either by the writ petitioners or by the respondents/State the instant two writ petitions cannot be held to be maintainable. It is thus submitted by Mr. Ghosh that the instant two writ petitions may be dismissed primarily on the ground of maintainability.

7. In course of his submission Mr. Banerjee, learned Advocate for the writ petitioners at the very outset draws attention of this Court to the materials as placed in connection with WPA 3669 of 2025. Drawing attention to page no. 35 in WPA 3669 of 2025 it is submitted by Mr. Banerjee that from the said paper it would reveal that a notice of requisition under Section 3 of Act II of 1948 was published on 25.08.1993 and immediately after such requisition an *ad hoc* payment was disbursed to the concerned land-looser. Drawing attention to page no. 37 of WPA 3669 of 2025 it is further submitted by Mr. Banerjee that on 05.01.1995 a notice under Section 4(1a) of Act II was also published in Gazette and on account of publication of such notice, the vesting process as has been initiated under Act II of 1948 in respect of the land of the writ petitioners stood completed.
8. Drawing attention to page no. 56 of WPA 3669 of 2025 it is further submitted by Mr. Banerjee that from the copy of the memo dated 20.11.2007 it would reveal that a notice under Section 9(3B) of Act I of 1894 (West Bengal Amendment Act-I of 1997) was issued on 15.02.2001. It is further submitted that it is the specific case of the writ petitioners that within the stipulated period that is within the period of two years no award was declared and as a consequence thereof there cannot be any hesitation to hold that the entire acquisition proceeding lapsed.

9. It is further submitted by Mr. Banerjee that may be due to over-sight or on account of mistake on the part of the conducting lawyer either on behalf of the writ petitioners or on behalf of the state such factum was not brought to the notice of the co-ordinate Bench which passed the order and judgment dated 19.02.2003 especially when at the time of hearing and passing of the said judgment none appears on behalf of the State. It is further submitted by Mr. Banerjee that Section 49 of Act I of 1894 deals with acquisition of part of house or building and it is no way related with the land as has been acquired.
10. At this juncture, Mr. Banerjee took me to page no. 65 of the writ petition being WPA 3669 of 2025. It is further submitted by Mr. Banerjee that from the copy of the memo dated 29.11.2024 as available at page no. 65 of WPA 3669 of 2025 it would reveal that the respondent no. 3/authority while declaring the award has failed to visualize the true implication of Section 9(3B) read with Section 11A of Act I of 1894 and at the same time he has also failed to visualize that as on 29.11.2024 that is on the day of declaration of the award under challenge, Act I of 1894 stood repealed with the enactment of Act XXX of 2013. It is further submitted by Mr. Banerjee that the respondent no. 3/authority has also failed to consider that Act II of 1948 also came to be repealed with the effect from 31.03.1997. It is thus submitted by Mr. Banerjee that the respondents/authorities are duty bound to initiate a fresh acquisition proceeding under Act

XXX of 2013 and to pass award as per the provisions to the said of 2013.

11. In course of his submission Mr. Ghosh, however, contended that from the materials as placed before this Court it would reveal that time and again the BSNL authority being the requiring body has paid a huge amount to the respondents/State toward acquisition and, therefore, the BSNL authority must not be saddled with more amount as prayed for.
12. In course of his submission Mr. Ghosh drawing attention to page no. 49 as well as page no. 26 of the affidavit-in-opposition as filed in connection with WPA 23317 of 2023 submits before this Court that in respect of 2.75 acres acquired of land the BSNL authority has paid a sum of Rs. 66,30,316/- to the acquiring body that is the respondents/State.
13. In course of his submission, Mr. Dhar, learned Senior Advocate appearing on behalf of the State in WPA 23317 of 2023 placed his reliance upon the reported decision of **Indore Development authority vs. Manoharlal & Ors** reported in **(2020) 8 SCC 129**. It is submitted by Mr. Dhar that in the reported decision of **Indore Development authority (supra)** the Hon'ble Apex Court clearly indicated that there has to be legal certainty where infrastructure has been created or has been developed partially and investments have been made especially when land has been acquired long back.

It is further submitted by Mr. Dhar that the Hon'ble Supreme Court also expressed the view that it is the duty of the Court to preserve the legal certainty and in doing so the question of delay and latches does not arises.

14. On careful consideration 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 sufficient materials have been placed before this Court on behalf of the writ petitioners that in respect of the aforementioned land of the writ petitioners the process of requisition and acquisition was started as per the provisions of Act II of 1948. Sufficient materials have also been placed before this Court that notice under Section 9(3B) of West Bengal Amendment Act-I of 1997 of Act I of 1894 was issued on 15.02.2001.
15. At this juncture, this Court proposes to look to the provisions of Section 9(3B) of Act I of 1894 which is as under:

“9. Notice to persons interested.-

(3A)

(3B) The collector shall also serve notice to the same effect on all such person 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 sub-section (1-a) 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 sub-section (1-a) 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 made 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.”

16. This Court considers that Section 11A of Act I of 1894 including the West Bengal Amendment are required to be looked into and the same is as under:

“11A. Period within which an award shall be made.-

(1) The Collector shall made an award under Section 11 within a period of two years from the date of publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation.-In computing the period of two years referred to in this section, the period during which any

action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.

STATE AMENDMENT

West Bengal.-In Section 11A, after the proviso, insert the following proviso, namely:- Section (3A), and sub-section (3B) of Section 9, the award shall be made within a period of two years from the date of the issue of the public notice under section 9.”

17. Keeping in mind, the provisions of Section 9(3B) and Section 11A of Act I of 1894 including the West Bengal Amendment Act-I of 1997, if I look to the factual aspects as involved in the instant two writ petitions it appears to this Court that indisputedly notice under Section 9(3B) was issued on 15.02.2001. No material could be placed before this Court that any award was passed within two years from the date of issuing of such notice that is on or before 14.02.2023.
18. Admittedly, a co-ordinate Bench vide its judgment and order dated 19.02.2003 in WP 18458 (W) of 1998 directed for referring the matter to the concerned Court for disposal of the dispute as involved in the said writ petition. No materials could be placed before this Court on behalf of the respondents/State that the State authority has made an endeavour to refer such dispute soon thereafter to the competent civil court.

19. Such being the position, this Court is of considered view that the State authority cannot be permitted to take advantage of his own wrong/delay/latches.
20. In view of such, this Court holds that the instant two writ petitions are very much maintainable.
21. On perusal of the impugned memo dated 19.11.2024 as passed by the respondent no. 3/authority it reveals to this Court that the respondent no. 3/authority without assigning any reason whatsoever has published the award in respect of the acquired land of the writ petitioners on the basis of the value of the land as on 10.07.2009.
22. As rightly pointed out by Mr. Banerjee that the issuance of memo dated 29.11.2024 by the respondent no. 3/authority which is the subject matter of challenge in WPA 3669 of 2025 is highly unjust since on the day of passing of the said award dated 29.11.2024 neither Act I of 1894 nor Act II of 1948 was in force. It does not appear to this Court that the respondent no. 3/authority in WPA 3669 of 2025 has made any endeavour to explain as to why he passed the award on 29.11.2024 as per the provisions of a repealed Act that is Act I of 1894 especially when as on that day Act XXX of 2013 has come into force.

23. At this juncture, this Court proposes to look to the paragraph no. 353 of the reported decision of **Indore Development Authority (supra)** which is quoted in below in verbatim:

“353. We are of the opinion that courts cannot invalidate acquisitions, which stood conclude. No claims in that regard can be entertained and agitated as they have not been revived. There has to be legal certainty where infrastructure has been created or has been developed partially, and investments have been made, especially when land has been acquired long back. It is the duty of the Court to preserve the legal certainty, as observed in Vodafone International Holdings B.V. v. Union of India and Ors. 245. The landowners had urged that since the Act of 2013 creates new situations, which are beneficial to their interests, the question of delay or laches does not arise. This court is of the opinion that the said contention is without merits. As held earlier, the doctrine of laches would always preclude an indolent party, who choose not to approach the court, or having approached the court, allows an adverse 245 (2012) 6 SCC 613 decision to become final, to re-agitate the issue of acquisition of his holding. Doing so, especially in cases, where the title has vested with the State, and thereafter with subsequent interests, would be contrary to public policy. In A.P. State Financial Corp. v. Garware Rolling Mill 246, this Court observed that equity is always known to defend the law from crafty evasions and new subtleties to evade the law. There is no dearth to talent left in longing for the undue

advantage of the wholesome provisions of Section 24(2) on the basis of wrong interpretation.”

24. In considered view of this court, the view taken by the Hon’ble Supreme Court in paragraph no. 353 of the case of **Indore Development Authority (supra)** is quite distinguishable from the facts and circumstances of the instant two writ petitions since at the time of hearing of the instant two writ petitions Mr. Banerjee, learned Advocate appearing on behalf of the writ petitioners have not pressed for return of the land to the writ petitioners on the contrary Mr. Banerjee has prayed for quashing of the memo dated 29.11.2024 as issued by the respondent no. 2/authority with a further prayer that the respondents/authorities more specifically the respondents/State and its instrumentalities be directed to initiate fresh acquisition proceeding under Act XXX of 2013 and to pay just compensation to the writ petitioners as per the provisions of the said Act of 2013.

25. At this juncture, this Court considers that Section 24 of the Act XXX of 2013 is also required to be looked into and the same is as under:

“24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.-(1) *Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894),-*

(a) where no award under Section 11 of the said Land Acquisition Act has been made, then, all

provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said Section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 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.”

26. It thus appears to this Court that it is the clear legislative mandate while enacting Section 24 of the Act XXX of 2013 that where no award under Section 11 of Act I of 1894 has been made then all the provisions of Act XXX of 2013 will apply.

27. This Court thus considers that the writ petitioners in the instant two writ petitions have made out sufficient case for obtaining the reliefs as prayed for especially when no case has been made out on behalf of the State that in respect of the majority of the land holdings, award has been made and compensation has been deposited.
28. Accordingly, the instant two writ petitions succeed.
29. Consequently, the entire requisition and acquisition proceeding as has been initiated by the respondents/State and its instrumentalities in respect of the land of the writ petitioners measuring about 1.22 acre in RS Dag no. 891 (presently LR Dag no. 1419) of Mouza Tarakeshwar, District – Hooghly, JL no. 29, RS Khatian no. 931, P.S. Tarakeshwar, District – Hooghly stood hereby lapsed.
30. Consequently, the declaration of award vide memo dated 29.11.2024 as passed by the respondent no. 3/authority in WPA 3669 of 2025 stood hereby quashed and cancelled.
31. Consequently, the Land Acquisition Collector, Hooghly that is the respondent no. 2 in WPA 3669 of 2025 is hereby directed to initiate a fresh proceeding of acquisition under Act XXX of 2013 in respect of the aforementioned land of the writ petitioners and shall take appropriate steps for disbursement of adequate compensation in favour of the writ petitioners.

32. The entire exercise as indicated hereinabove including disbursement of compensation in favour of the writ petitioners shall have to be completed by the respondent no. 2/authority within 210 working days from the date of communication of the server copy of this judgment.
33. The time limit as fixed by this Court is mandatory and peremptory.
34. Before parting with, it is made clear that while computing the amount of compensation as payable to the writ petitioners the respondent no. 2/authority shall also consider the aspect of rental compensation as payable to the writ petitioners from the date of actual possession of the land of the writ petitioners till the day of initiation of a fresh acquisition proceeding under Act XXX of 2013 after deducting on account of payment as received by the writ petitioners and/or their predecessor-in-interest under Section 8B of Act II of 1948.
35. Liberty is given to the learned Advocate-on-Record for the writ petitioners to communicate the server copy of this order to the respondent no. 2/authority.
36. The respondent no. 2/authority is directed to act on the basis of the server copy of this order.
37. With the aforementioned observation, the instant two writ petitions being WPA 23317 of 2023 and WPA 3669 of 2025 are allowed and disposed of.

38. Urgent Xerox certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(PARTHA SARATHI SEN, J.)