

S/L 4
05.03.2025
Court. No. 551
*Suvayan/
Sourav/
KAUSHIK*

**WPA 11488 of 2000
With
CAN 2 of 2014 (Old No. CAN 11183 of 2014)**

**Sri Barun Kumar Kuity & Ors.
Vs.
The State of West Bengal & Ors.**

*Mrs. Usha Maiti
Mr. Sukanta Das
Mr. Sakya Maity*

...for the petitioners.

*Mr. Chandi Charan De, AGP
Mr. Anirban Sarkar*

...for the State.

*Mr. S. M. Hassan
Ms. Anupama Yasmin*

...for the Haldia Municipality.

Mr. Sk. Afrojul Haque

...for the respondent no. 11.

In Re: CAN 2 of 2014 (Old No. CAN 11183 of 2014)

1. This is an application for recalling of the order dated August 10, 2009.
2. It reveals to this court that a similar application was filed being CAN 1225 of 2019 with the self-same prayer which was dismissed by a co-ordinate Bench of this Court, however, in MAT 96 of 2021 a Division Bench of this Court by its order dated 08.12.2021 set aside the said order dated 11.11.2019 and allowed the restoration as prayed for and thus WPA 11488 of 2000 was restored to its original file and number.
3. In view of such, CAN 2 of 2014 (Old No. CAN 11183 of 2014) has become infructuous and is disposed of.

4. Learned Registrar I.T. is hereby directed not to show pendency of CAN 2 of 2014 (Old No. CAN 11183 of 2014) during subsequent listing of this case.

In Re: CAN 11182 of 2014

1. From the report dated 25.02.2025 as submitted by AR (MO-II) it reveals that another interlocutory application being CAN 11182 of 2014 has been traced out. Though the said CAN 11182 of 2014 is not in today's list but the same is treated to be in today's list.
2. In CAN 11182 of 2014 a similar prayer was made as has been made in CAN 2 of 2014 (Old No. CAN 11183 of 2014).
3. Such being the position this Court holds at CAN 11182 of 2014 has practically become infructuous and is also disposed of.
4. Learned Registrar I.T. is once again directed not to show pendency of CAN 11182 of 2014 during subsequent listing of this case.

In Re: WPA 1148 of 2000

1. This Court has heard the learned advocate for the writ petitioners, learned advocate for the State, learned advocate for the respondent no. 10 and learned advocate for the respondent no. 11.
2. By filing the instant writ petition, the writ petitioner has prayed for issuance of appropriate writ/writs against the respondent authorities for cancellation and/or quashing the notifications/notices vide

Midnapur No. 166/LA(Cell)HDA/90/96-97 dated 23.12.1996 as published under Section 4 of the Land Acquisition Act of 1894 (hereinafter referred to as the Act I of 1894) along with other ancillary reliefs.

3. At the time of hearing, Ms. Maiti, learned advocate appearing on behalf of the writ petitioners submits before this Court that since the instant writ petition was filed in the year 2000 and since in the meantime, 24 years have been passed, this Court sitting in writ jurisdiction may mould the relief in terms of the provision of 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' in short).
4. It is submitted by Ms. Maiti that though notification under Section 4 of the Act I of 1894 was published on 23.12.1996 and a declaration was also published under Section 6 of Act I of 1894 on 10.08.1997 and further an award was declared on 16.04.2001 but the writ petitioners have not been paid any compensation for the said acquisition as yet. It is further submitted by Ms. Maiti that even no notice under Section 12(2) of the said Act I of 1894 was served upon the writ petitioners.
5. It is further contended on behalf of the writ petitioners that since the possession of the acquired land has not been taken by the

respondents/authorities, the entire acquisition proceeding may be considered to have been lapsed in terms of the provision of Section 24(2) of the said Act of 2013. It is further submitted by Ms. Maity that in respect of the relevant plots of land, the record of rights still stands in the name of the writ petitioners. Drawing attention to the provision of Section 16 of the Act I of 1894, it is further submitted by Ms. Maiti that since the possession of the acquired land of the writ petitioners has not been taken by the collector, the vesting as claimed by the respondents/authorities have not been completed and thus, there cannot be any impediment in granting relief to the writ petitioners in terms of the provision of Section 24(2) of the said Act of 2013.

6. In course of her submission, Ms. Maiti also draws attention of this Court to the provision of Sections 11 and 12 of the Act I of 1894. It is submitted by her that even no notice with regard to publication of award has been served upon the writ petitioners.
7. In course of her argument, Ms. Maiti places her reliance upon the following reported decisions, namely, ***Indore Development Authority Vs. Manoharlal & Ors.*** reported in **2020 (8) SCC 129**; ***Narmada Bachao Andolan Vs. State of M.P.***, reported in **AIR 2011 SC 1989** and ***ABCI Infrastructure Limited Vs. State of West***

Bengal & Ors., reported in ***2017 (1) WBLR (Cal) 90.***

8. In her next limb of submission, it is further contended by Ms. Maiti that there was inordinate delay in passing the award though the Act I of 1894 clearly specifies that award is to be published within two years and on account of such unexplained delay, the land acquisition proceeding which is the subject matter of the instant writ petition may also be declared as void.
9. *Per contra*, Mr. Dey, learned advocate appearing on behalf of the respondent/State at the very outset draws attention of this Court to the various paragraphs of the writ petition as filed by the petitioners. It is submitted by Mr. Dey that from paragraphs 2 and 3 of the instant writ petition, it would reveal that there is no dispute that prior to the initiation of the acquisition proceeding under the Act I of 1894 notices under Section 4 were published under the Act I of 1894 and thereafter a declaration has been made under Section 6 of the Act I of 1894. Drawing attention of paragraph no. 3 of the instant writ petition it is further submitted by Mr. Dey that the writ petitioners have admitted regarding initiation of LA Case No. 72 of 1997/1998 under Section 9(3) and (4) of the Act I of 1894. Drawing attention to paragraph no. 5 of the instant writ petition it is further submitted by Mr. Dey that

it is also admitted position that the writ petitioners have submitted their objection on 20th June, 2000 against the proposed Act.

10. In course of his submission, Mr. Dey, learned Additional Government Pleader also draws attention of this Court to affidavit-in-opposition as filed by the respondent nos. 1, 8 and 9 as affirmed on 10th August, 2009. It is submitted by Mr. Dey that from paragraph no. 3 of the said affidavit-in-opposition it would reveal that on account of pendency of a writ petition being WP 9114 (W) of 1998 and on account of an interim order as passed in connection with the said writ petition, the award could not be published within the stipulated period of two years and ultimately the said interim order was vacated on 1st September, 2000 and soon thereafter the award was prepared and declared on 18th April, 2001. It is submitted by Mr. Dey that by no stretch of imagination it can be said that there occurred a delay in submitting the award.
11. It is further submitted by Mr. Dey that the award as has been passed in the writ petition has not been accepted by the writ petitioner and thus the requisite amount of compensation was deposited with the appropriate authority. Mr. Dey further contends from the supplementary affidavit-in-opposition as filed by the respondent no. 11 as affirmed on 5th August, 2009 it would reveal that

after taking possession of the land in question under Section 16 of the Act I of 1894 the same was handed over to the respondent no. 11 being the requiring body. It is thus contended by Mr. Dey that the writ petitioner is not entitled to any relief under Section 24(2) of the said Act of 2013.

12. Mr. Hoque, learned advocate appearing on behalf of the respondent no. 11 also draws attention of this Court to the supplementary affidavit-in-opposition as affirmed on 5th August, 2009. While adopting the argument of Mr. Dey, Mr. Hoque submits that in the meantime the respondent no. 11 authority after taking possession of the acquired land had created third party interest over the same.
13. Mr. Hasan, learned advocate appearing on behalf of Haldia Municipality also supports the contention of Mr. Dey and also Mr. Hoque.
14. Since, at the time of hearing learned advocate appearing on behalf of the writ petition has requested this Court to mould the relief on account of long pendency of the instant writ petition in accordance with the provision of Section 24(2) of the said Act of 2013, this Court considers that the provision of Section 24 of the said Act of 2013 is required to be looked into and the same is reproduced herein below in verbatim.

“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.”

15. Admittedly, with the enactment of the said Act of 2013, the old Act I of 1894 was repealed. However, Section 24 of the said Act of 2013 made it clear that in the event an award has been made under Section 11 of the Act I of 1894 five years or more prior to commencement of the said Act of 2013 but the physical possession of the said acquired land has not been taken or the compensation has not been paid

the said acquisition proceeding has been deemed to have lapsed.

16. It thus appears to this Court that in order to get a relief under Section 24(2) of the said Act of 2013, the petitioner has to satisfy that notwithstanding initiation of proceeding of acquisition under the Act I of 1894 either the physical possession of the land has not been taken or the compensation has not been paid. If any one of the aforesaid two conditions is found to have been fulfilled, the proceeding as initiated under the provision of Act I of 1894 shall be considered as lapsed. The said situation has been well-explained by the Hon'ble Apex Court in the case of **Indore Development Authority** (supra) in the following manner:

“366. In view of the aforesaid discussion, we answer the questions as under:

366.1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1-1-2014, the date of commencement of the 2013 Act, there is no lapse of proceedings. Compensation has to be determined under the provisions of the 2013 Act.

366.2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the 2013 Act under the 1894 Act as if it has not been repealed.

366.3. The word “or” used in Section 24(2) between possession and compensation has to be read as “nor” or as “and”. The deemed

lapse of land acquisition proceedings under Section 24(2) of the 2013 Act takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse”

17. Admittedly, in the instant writ petition there is no averment to the effect that either the compensation for the acquisition has not been paid by the respondent State or the respondent State has not taken the possession since at the time of filing of the instant writ petition the writ petitioners prayer was for quashing of the notice under Section 4 of the Act I of 1894. Such points have been raised by Mrs. Maiti in course of her argument by saying that as on this day the names of the writ petitioner are still transpiring in the relevant LR ROR in rayat. It was further argued by her that none of the writ petitioners have been paid compensation and even no notice was given to the writ petitioners in terms of Section 12(2) of the Act I of 1894. It is contended by her that for non-service of such notice, the award by the Collector cannot be held to be filed.
18. Admittedly, Section 12 of the Act I of 1894 clearly mandates filing of the award in the Collector’s Office and upon such filling the said award shall become

final and conclusive evidence as between the Collector and the person interested. The said section further mandates that the Collector shall give immediate notice of filling of his award to the interested person.

19. From the affidavit-in-opposition as filed by the respondent nos. 8, 9 and 10 it reveals that the award was prepared and declared on 16.04.2001, however, the writ petitioners have not withdrawn compensation till the day of filing of the said affidavit-in-opposition i.e. till 10th August, 2009. Since, the point of alleged non-service of notice was not taken in the original writ petition the respondent State got no opportunity to counter the same. However, from the supplementary affidavit-in-opposition of the respondent no. 11 it reveals to this Court that after submissions and declaration of the award on 16th April, 2001 the possession of the acquired land was taken on 6th February, 2002 and handing over possession to the requiring body was completed on the self-same day that is 6th February, 2002. No material is forthcoming from the side of the writ petitioner that such assertion is contrary to the truth.
20. In view of such this Court holds that the writ petitioners have miserably failed to establish that the possession of the land in question was not taken by the respondent authorities. Admittedly, in course

of hearing, copies of some LR ROR were shown to substantiate the possession of the writ petitioner but in considered view of this Court those are no way helpful to the writ petitioner in view of the fact it has been contended on behalf of the respondent no. 11 that after taking possession of the acquired land they had created third party interest. It is trite law that a record of right raises a presumption of possession but such presumption is rebuttable one. It appears to this Court that presumption of possession as claimed by the writ petitioners over the acquired plot of land has been negated by the affidavit of the requiring body/respondent no. 11 herein.

21. In view of the discussion made above, this Court is of thus considered view that the writ petitioners are not entitled to get any relief under Section 24(2) of the said Act of 2013 though in the instant writ petition no such prayer was made. No explanation is also forthcoming as to what prevented the writ petitioner to mould their prayers either by way of amendment or by filing any supplementary affidavit.
22. In further considered view of this Court, the reported decision of *Narmada Bachao Andolan* (supra) case is in no way helpful to the writ petitioner since in the said case the Hon'ble Apex Court had considered the provision of Article 300A of the Constitution of India in the light of the Land Acquisition Proceeding and thus the facts and

circumstances involved in the case of *Narmada Bachao Andolan* (supra) is distinguishable from the facts and circumstances of the present case.

23. In the reported decision of *ABCI Infrastructure Pvt. Ltd.* (supra), a Coordinate Bench of this Hon'ble Court had dealt with the validity of the award as published under Section 11A of the Act I of 1894 and in doing so the said Court dealt with the provision of Sections 4 and 6 of the Act I of 1894. In considered view of this Court, the facts as involved in the writ petition is also distinguishable from the facts of reported decision of *ABCI Infrastructure Pvt. Ltd.* (supra) and thus the same has got no manner of application in the instant writ petition.
24. In the judgment dated 6th December, 2022 as passed by a Coordinate Bench in WPA 10205 of 2001 (Motilal Mondal & Ors. Vs. Union of India & Ors.), a Coordinate Bench had occasioned to deal with another writ petition involving self-same land acquisition proceeding wherein it has been held specifically that it is well-settled that this Court under Article 226 of the Constitution of India cannot be travel beyond the scope of the writ petition.
25. As discussed (supra), since the instant writ petition has been filed challenging the publication of notification under Section 4 of the Act of 1894 and since no subsequent averments have been made on behalf of the writ petitioner praying appropriate

relief under Section 24(2) of the said Act of 2013 and also in view of the discussion made in the forgoing paragraph, this Court considers the instant writ petition is devoid of any merit and is thus dismissed.

26. There shall, however, be no order as to costs.
27. 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.)