

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Justice PARTHA SARATHI SEN

WPA 17757 of 2024

Sadhan Narayan Kundu and Ors.

Vs.

The State of West Bengal and Ors.

For the Petitioner:

Mr. Amit Kumar Pan, Adv.,
Ms. Tanusri Santra, Adv.

For the State:

Mr. Supratim Dhar, Sr. Adv.,
Mr. Priyabrata Batabyal, Adv

Hearing concluded on:

13.05.2025.

Judgment on:

20.05.2025.

PARTHA SARATHI SEN, J. : –

1. By filing the instant writ petition the writ petitioners have prayed for issuance of appropriate writ/writs against the respondents/authorities for initiating a fresh proceeding in accordance with the provisions of 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) with a further prayer for determination and disbursement of compensation in terms of the provisions of said Act of 2013 along with other ancillary reliefs.

2. In course of hearing Mr. Pan, learned advocate appearing on behalf of the writ petitioner at the very outset draws attention of this Court to page no.23 of the instant writ petition being a copy of the notice dated 17.07.1991 as published on 26.07.1991 under Section 4(1a) of the West Bengal Land (Requisition and Acquisition) Act, 1948 (hereinafter referred to as the 'Act II of the 1948' in short). It is submitted on behalf of the writ petitioner that such notice under Section 4(1a) of Act of II of 1948 was issued by the respondent/authorities for the purpose of acquisition within the meaning of Section 4 of Act II of 1948 for the purpose of establishment of a primary health centre under Domkol Development Block. Drawing attention to Section 4(2) of Act II of 1948 it is submitted by Mr. Pan that pursuant to the provisions of Section 4(2) of Act II of 1948 when a notice is published in the official gazette under Section 4(1a) of Act II of 1948 the said requisitioned land vests absolutely in the State free from all encumbrances from the day of publication of the said notice.

3. At this juncture Mr. Pan draws attention of this Court to the provision of West Bengal Land (Requisition and Acquisition) (Amendment Act, 1994 (hereinafter referred to as the 'said Act of 1994' in short). It is submitted by Mr. Pan that the said Amendment Act of 1994 came into effect on and from 31.03.1994.

4. It is further submitted by Mr. Pan that in view of the provision of Section 2 of the said Amendment Act of 1994 it would reveal that the validity of Act II of 1994 was extended till 31.03.1997.

5. Drawing attention to Section 3 of the said Amendment Act of 1994 it is further submitted by Mr. Pan that by the said Amendment Act of 1994 Section 3 of Act II of 1948 was omitted meaning thereby taking away of the power of requisition of the respondent/authority under Section 3 of Act II of 1948 with effect from 01.04.1994.

6. At this juncture Mr. Pan again draws attention of this Court to the provision of West Bengal Land (Requisition and Acquisition Amendment) Act, 1996 (hereinafter referred to as the 'Amendment Act of 1996' in short) which was gazetted on 08.10.1996 with retrospective effect from 01.04.1994. It is submitted that by virtue of Section 2 of the Amendment Act of 1996 an amendment was brought in respect of Section 7 of Act II of 1948 whereby and whereunder the collector was empowered to determine compensation to the land losers in accordance with the provisions of Section 23 ((1), 1A and 2) of Act I of 1894 in respect of land as has been acquired under Section 4 of Act II of 1948.

7. It is further submitted by Mr. Pan that the proviso of Section 7(1) of the Act II of 1948 envisages that for the purpose of determining the market value of an acquired land under Act II of 1948 in terms of provisions of Section 23 (1) of Act I of 1894, the day of publication of notice under Section 4(1a) of Act II of 1948 would be deemed to be the market value of such acquired land.

8. Drawing attention to Section 3 of the Amendment Act of 1996 it is further submitted by Mr. Pan that Section 7A of Act II of 1948 also envisages that an award under Section 7(2) of Act II of 1948 shall have to

be made by the collector within a period of 3 years from the date of publication of notice under Section 4 (1a) of Act II of 1948 and in a case where such notice has been published more than two years before the commencement of the Amendment Act of 1994 the said award shall have to be made within a period of one year from the date of commencement of the Amendment Act of 1994 failing which the said notice under Section 3 of Act II of 1948 would lapse.

9. In course of his submission Mr. Pan once again draws attention of this Court to page no.23 of the instant writ petition being a copy of the notice under Section 3 of Act II of 1948 as has been published on 26.07.1991. It is submitted by Mr. Pan that in view of the amended provision of Section 7A of Act II of 1948 the Collector was duty bound to make its award on or before 31.03.1995 i.e. within one year from 31.03.1994 on which day Amendment Act of 1994 was brought into effect retrospectively.

10. At this stage Mr. Pan requests this Court to peruse Section 7A and proviso of Section 7(1) of Act II of 1948 conjointly. It is submitted by Mr. Pan that on conjoint perusal of the aforesaid two provisions it would reveal that on account of lapses of notice for non-publication of the award under Section 7A of Act II of 1948 the collector cannot determine the market value of the acquired land in view of the fact under the proviso Section 7(1) of Act II of 1948, the yardstick for determining the market value is the market value of the acquired land on the date of publication of the notice under Section 4(1a) of Act II of 1948.

11. At this juncture Mr. Pan again draws attention of this Court to the provision of Section 9 (3A) of Act I of 1894. It is submitted by Mr. Pan that Section 9(3A) of Act I of 1894 envisages service of notice by the collector to the interested persons in respect of the land where notice of requisition under Section 3 of Act II of 1948 has been published. It is further submitted by Mr. Pan that Second proviso of Section 9 (3A) of Act I of 1894 further postulates for making of an award by the collector under Section 11 of Act I of 1894 and upon such award vesting became complete. It is thus submitted by Mr. Pan that insertion of Sub-section 3A in Section 9 of the Act I of 1894 clearly indicates the legislative intent that previous vesting under Section 4(2) of Act II of 1948 was given a goodbye.

12. It is thus submitted by Mr. Pan that since no notice under Section 9(3A) of Act I of 1894 was issued to the writ petitioners and since no award has been passed under Section 11 of Act I of 1894 by the collector in respect of the requisitioned land under Section 3 of Act II of 1948 and also since the writ petitioners' said land was utilized by the respondent /authorities for a considerable length of time depriving the writ petitioners, an appropriate writ may be issued against the respondent/authorities to initiate a fresh proceeding under the said Act of 2013 with a further direction to the respondent /authorities to pay adequate compensation on account of unlawful occupation of the land of the writ petitioners on and from 01.04.1997.

13. In course of his submission Mr. Pan places his reliance upon a Full Bench decision of this High Court in the case of ***State of West Bengal Vs. Sabita Mondal*** reported in **2100 (3) CHN Cal 555**.

14. In course of his submission Mr. Pan also draws attention of this Court to the last paragraph of page no.5 of the report in the form of affidavit as filed by respondent nos.2, 3 and 4 as has been affirmed on 03.01.2025. It is submitted on behalf of the writ petitioners that though a case has been made out on behalf of the respondent nos. 2, 3 and 4 that the writ petitioners are not entitled to get compensation under the provisions of the said Act, 2013 in view of the reported decision of a Division Bench of this Court in the case of ***State of West Bengal vs. Niladri Chatterjee*** reported in **2017 (4) CHN Cal 451** but the said judgement of ***Niladri Chatterjee*** is *per in curium* inasmuch as in the case of ***Niladri Chatterjee (supra)*** the Hon'ble Division Bench has failed to visualize that Section 24 of Act 30 of 2013 does not deal with the land acquisition processes as have been initiated under Act II of 1948 and as have been lapsed for non-publication of the award within the stipulated period as has been mentioned in Section 7A of Act II of 1948.

15. Placing reliance upon a reported decision of ***State of West Bengal and Ors vs. Ajima Bibi and Ors*** reported in **(2016) 15 SCC 710** it is submitted by Mr. Pan that in the said reported decision in a similar situation the Hon'ble Apex Court noticing that land owned by the writ petitioner has already been utilized by the respondent/State pursuant to an initial declaration the respondent/State was directed to take steps for

notifying the acquisition once again and determine compensation in accordance with law instead of directing for passing an award in respect of a lapsed proceeding beyond a statutory period.

16. In course of his submission Mr. Dhar, learned Senior Advocate appearing on behalf of the respondent/State at the very outset draws attention of this Court to Section 24 of the said Act of 2013. It is submitted by Mr. Dhar that on perusal of Section 24 of the said Act of 2013 it would reveal that it is the legislative mandate that Section 24 of the said Act of 2013 is restricted in respect of land acquisition process under Act I of 1894 and thus the said Section 24 clearly postulates regarding the next course of action in respect of lapsed land acquisition proceeding as has been initiated under Act I of 1894.

17. Placing his reliance upon the reported decision of ***State of West Bengal vs. Niladri Chatterjee*** reported in ***(2017) 4 CHN Cal 451*** it is argued by Mr. Dhar that in the said reported decision a Division Bench of this Court had held that from a plain reading of Section 24 of the said Act of 2013, it would reveal that there is a phrase 'proceeding initiated under the Land Acquisition Act 1894' and in view of such, it cannot be held by any stretch of imagination that the proceedings as have been initiated other than the said Act of 1894 would come under the purview of Section 24 of the said Act I of 2013. It is thus submitted by Mr. Dhar that the applicability of Section 24 of the said Act of 2013 is restricted to the lapsed proceedings under Act I of 1894.

18. In his next limb of submission Mr. Dhar places his reliance upon the judgement and order dated 22.12.2023 as passed in ***MAT 1181 of 2019 (State of West Bengal and Ors . Vs. Mahadeb Kahan and Ors.)***.

It is submitted that while disposing the case of ***Mahadeb Khan (supra)*** another Division Bench of this High Court had occasion to consider identical questions as have been involved in the instant writ petition and in doing so the said Division Bench categorically held that since no award has been made in respect of land acquisition proceeding initiated under the 1894 Act, Section 24 of the said Act of 2013 would not apply. However, the said Division Bench directed the land acquisition collector to initiate proceeding for acquiring the land of the appellants under the provisions of 2013 Act.

19. This Court has perused the entire materials as placed before this Court. This Court has also gone through the relevant provisions of Act I of 1894, Act II of 1948, the Amendment Act of 1994, the Amendment Act of 1996 and the said Act of 2013. This Court has also given due consideration over the submissions of the learned advocates for the contending parties.

20. For effective adjudication of the instant writ petition this court proposes to look to some of the provisions of Act II of 1948 and those are quoted hereinbelow:-

Section 3 of Act II of 1948 is quoted hereinbelow in verbatim:-

“3. Power to requisition. (1) If the State Government is of the opinion that it is necessary so to do for maintaining supplies and services

essential to the life of the community or for increasing employment opportunities for the people by establishing commercial estates and industrial estates in different areas or for providing proper facilities for transport, communication, irrigation or drainage, or for the creation of better living conditions in rural or urban areas, not being an industrial or other area excluded by the State Government by a notification in this behalf, by the construction or reconstruction of dwelling places in such areas or for purposes connected therewith or incidental thereto, the State Government may, by order in writing, requisition any land and may make such further orders as appear to it to be necessary or expedient in connection with the requisitioning.

Provided that

1A.....

2.....

3.....”

Section 4 of Act II of 1948 is as under:-

“Acquisition of land. (1) *Where any land has been requisitioned under section 3, the State Government may use or deal with such land for any of the purposes referred to in sub-section (1) of section 3 as may appear to it to be expedient.*

(1a) The State Government may acquire any land requisitioned under section 3 by publishing a notice in the Official Gazette that such land is required for a public purpose referred to in sub-section (1) of section 3.

(2) Where a notice as aforesaid is published in the Official Gazette, the requisitioned land shall, on and from the beginning of the day on which the notice is so published, vest absolutely in the [State] Government free from all incumbrances and the period of requisition of such land shall end.”

Section 7 of Act II of 1948 is as under:-

“7. Compensation.- (1) Wherever any land is acquired under section 4 there shall be paid [to every person interested] compensation the amount of which shall be determined by the Collector in the manner and in accordance with the principles set out [in sub-sections (1), (1A) and (2) of section 23] of the Land Acquisition Act, 1894 [so far as they may be applicable]:

Provided that the market value referred to in clause first of sub-section (1) of section 23 of the said Act shall, in respect of any land acquired under this Act, be deemed to be the market value of such land on the date of publication of the notice referred to in [sub-section (1a) of section 4].

a) When the compensation has been determined under sub-section (1) the Collector shall make an award in accordance with the principles set out in section 11 of the Land Acquisition Act, 1894, [and the amount referred to (in sub-sections (1), (1A) and (2) of section 23) of that Act shall also be included in the award]:”

Section 7A of Act II of 1948 is as under:-

“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 the 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 the commencement of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 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.”

Section 2 and Section 3 of Amendment Act of 1994 are as under:-

“2. Amendment of Section 1 of West Bengal Act 2 of 1948.- *In Sub-section (4) of section 1 of the West Bengal Land (Requisition and Acquisition) Act, 1948, (hereinafter referred to as the principal Act) as re-enacted by the West Bengal Land (requisition and Acquisition) Reenacting Act, 1977, for the words, figures and letters “the 31st day of March, 1994” the words, figures and letters “ the 31st day of March, 1997,” shall be substituted.*

3.Omission section 3.- *section 3 of the principal Act (hereinafter referred to as the said section) shall be omitted with effect from the 1st day of April, 1994;*

Provided that such omission shall not-

a.....

b.....

c.....”

Section 1 of Amendment Act of 1996 is as under:-

“1. Short title of commencement.- *(1) This Act may be called the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1996.*

(2) It shall be deemed to have come into force on the 1st day of April, 1994.”

“2. Amendment of section 1 of West Bengal Act 2 of 1948. *In section 7 of the West Bengal (Requisition and Acquisition) Act, 1948 (hereinafter referred to as the principal Act) as re-enacted by the West Bengal Land (Requisition and Acquisition) Re-enacting Act, 1977,*
(1) in sub-section (1),-

(a) for the words, figures and brackets "in sub-section (1) of section 23" the words, figures, letter and brackets "in sub-sections (1), (1A) and (2) of section 23" shall be substituted, and

(b) the second proviso shall be omitted;

(2) in clause (a) of sub-section (2), for the words, figures and brackets "in sub-section (2) of section 23" the words, figures, letter and brackets "in sub-sections (1), (1A) and (2) of section 23" shall be substituted."

Section 9 of Act I of 1894 is as under:-

"9. Notice to persons interested:-

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3A. The Collector shall also serve notice to the same effect on all such persons 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 West Bengal Land (Requisition and Acquisition) Act, 1948 (hereinafter referred to in this section as the said Act), as re-enacted by the West Bengal Land (Requisition and Acquisition) Re-enacting Act, 1977, and, in every such case, the provisions of sub-section (1) of section 4, section 5, section 5A, section 6, section 7 and section 8 of this Act shall be deemed to have been complied with:

Provided that the date of notice under this sub-section shall be the date of reference for the purpose of determining the value of such land under this Act:

Provided further that when the Collector has made an award under section 11 in respect of any such land, such land shall, upon such award, vest absolutely in the Government, free from all encumbrances.

(3B) The Collector shall also serve notice to the same effect on all such persons 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 make 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.

4....."

Section 34 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) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894),

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(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.”

21. 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 from page no.23 of the instant writ petition it would reveal that in respect of the writ petitioners' land, particulars of which has been mentioned at paragraph no.2 of the instant writ petition, a notice under Section 4(1a) of Act II of 1948 was published in the official gazette on July 26, 1991. As rightly argued by Mr. Pan that as soon as such notice was published in the official gazette, the requisitioned land of the writ petitioners' stood vested absolutely with the State under Section 4(2) of Act II of 1948.

22. It is undisputed that on account of such acquisition, the writ petitioners were not disbursed with any compensation. This Court has noticed that by virtue of the Amendment Act of 1994 the validity of the Act II of 1948 was extended till 31.03.1994. However, by the self same Amendment Act, on and from 01.04.1994 the power of requisition under

Section 3 of the Act II of 1948 was taken away. On perusal of the amended provision of Section 7A of Act II of 1948 it reveals that collector was empowered to make an award under Section 7(2) of Act II of 1948 within the period of three years from the date of publication of the notice under Section 4(1a) and in the event such award is not made within the said period, the said notice under Section 4(1a) would lapse. The proviso of Section 7A of Act II of 1948 further mandates that in the event the aforementioned notice have been published more than two years before the commencement of the Amendment Act of 1994, the award shall have to be made within a period of one year from the date of commencement of the said Amendment Act.

23. On perusal of the entire materials as placed before this Court, this Court has got no iota of doubt that on account of non-publication of the award within the stipulated period as mentioned in Section 7A of Act II of 1948 the notice as published under Section 4(1a) of Act II of 1948 lapsed in terms of the provision of Section 7A of the said Act of 1948. Consequently, on account of such lapse of notice the vesting under Section 4(2) of Act II of 1948 got vitiated.

24. At this juncture if I look to the provisions of Section 9(3A) and (3B) of Act I of 1894 it appears that it is the legislative intent that in respect of land requisitioned and acquisitioned under Act II of 1948, the Collector shall serve notice to all such persons known or believed to be interested in any such land for the purpose of determination of the award under Section 11 of Act I of 1894. The first proviso of Section 9 (3B) of Act I of

1894 also postulates that the date of publication of notice under Section 4 (1a) of Act II of 1948 would be the date of reference for the purpose of determining the value of such land under Act I of 1894. As noticed earlier that since the notice as has been published under Section 4(1a) of Act II of 1948 lapsed, the collector cannot determine the value of the acquisitioned and requisitioned land under Act II of 1948 on the basis of the date of publication of such lapsed notice. Undoubtedly, no award has also been made under Section 11 of Act I of 1894 in respect of requisitioned and acquisitioned land pursuant to the notice as has been annexed at page no.23 of the instant writ petition since no notice under Section 9(3B) the Act I of 1894 was served upon the writ petitioners.

25. At this juncture this Court proposes to look to the relevant paragraphs of the judgment of the Hon'ble Division Bench in the case of ***Mahadeb Kahn (supra)*** and those are quoted hereinbelow in verbatim:-

“37. Even after the notice under Section 4(1a) of the 1948 Act lapsed, the government could have revived the acquisition proceedings by serving notice under Section 9 (3A) of the 1894 Act. No time period was prescribed for service of such notice. However, that was not done during the life time of the 1894 Act. That could not be done any further after January 1, 2014, the date with effect from which the 1894 Act stood repealed. The suggestion of learned Advocate for the State that even after repeal of the 1894 Act, in the present case, proceedings could continue under that Act, is completely unacceptable. Such scenario is contemplated only under Section 24(1) (b) of the 2013 Act which is to the effect that in any case of Land Acquisition proceedings initiated under the 1894 Act, where an Award under Section 11 of the said Act has been made, then such

proceedings shall continue under the provisions of that Act, as if that Act has not been repealed. In the present case, admittedly no Award was ever made. In any event section 24 of the 2013 Act would not apply since the acquisition proceedings were not initiated under the 1894 Act.

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48. In view of the aforesaid, the present appeal fails. We direct the First Land Acquisition Collector / the Competent Authority to initiate proceedings for acquiring the land of the appellants under the provisions of the 2013 Act and complete such proceedings within 4 months from date and pay the compensation amount to the respondents/writ petitioners within 4 weeks thereafter.”

26. In view of the discussion made hereinabove and in view of the proposition of law as enunciated in the case of ***Mahadeb Kahan (supra)*** this Court holds that the justice would be sub-served if the respondent no.3 is directed to initiate proceeding for acquiring land of the writ petitioners particulars of which have been mentioned in paragraph 2 of the instant writ petition as per the provision of the said Act of 2013 and to complete such acquisition proceeding within a stipulated time.

27. Accordingly, the instant writ petition succeeds and WPA 17757 of 2024 is thus allowed.

28. The respondent no.3 is hereby directed to take appropriate steps for initiating proceeding for acquisition of the land of the present writ petitioners, particulars of which as mentioned in paragraph 2 of the instant writ petitioner as per the provisions of Act of 2013 and to complete such proceeding within 120 working days from the date of communication

of this judgement and to pay the just compensation to the writ petitioners within four weeks thereafter.

29. Urgent photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

(PARTHA SARATHI SEN, J.)