

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

Present:

The Hon'ble Justice Partha Sarathi Sen

WPA 18905 of 2023

Bhabesh Mahata & Ors.

Vs.

The State of West Bengal & Ors.

For the petitioners : Mr. Lalratan Mandal
Mr. Dilip Kumar Sadhu

For the State : Mr. Soumitra Bandyopadhyay
Mr. Priyabrata batabyal

Heard on : 17.07.2025

Judgment on : 17.07.2025

PARTHA SARATHI SEN, J.:

1. This Court has heard Mr. Mandal, learned advocate for the writ petitioners and Mr. Batabyal, learned advocate appearing on behalf of the respondent/State duly led by Mr. Bandyopadhyay, learned senior government advocate.
2. By filing the instant writ petition, the writ petitioners have prayed for issuance of appropriate writ/writs against the respondents/authorities, more specifically, against the respondent

no. 5 herein for quashing and/or rescinding and/or cancelling the order dated 01.03.2023 whereby and whereunder the said respondent no. 5/authority came to a finding that the present writ petitioners are not entitled to compensation in terms of the provision of Act XXX of 2013.

3. At the time of hearing Mr. Mandal, learned Advocate appearing on behalf of the writ petitioners has filed a copy of the writ petition being WP No. 10779 (W) of 2017 as filed in the earlier round of litigation and the same is taken on record.
4. At the time of hearing, Mr. Mandal draws attention of this Court to page nos. 25 and 26 of the copy of the WP 10779 (W) of 2017 being a copy of the representation dated 20.01.2017 as submitted by the predecessor-in-interest of the writ petitioners with respondent no. 5/authority.
5. It is submitted by Mr. Mandal that from the copy of the said representation, it would reveal that it is the grievance of the writ petitioners that subsequent to publication of a notice under Section 4(1a) of the Act II of 1948, the writ petitioners' predecessor-in-interest was served with a notice under Section 5(3) of the Act II of 1948 in connection with L.A. Case No. 28/1972-73 but till date, no compensation has been disbursed either in favour of the writ petitioners and/or their predecessor-in-interest.

6. Drawing attention to Section 7A of the Act II of 1948, it is further submitted by Mr. Mandal that the respondent no. 2/authority did not make award under Section 7(2) of Act II of 1948 within the stipulated period i.e., within the period of three years from the date of publication of notice under Section 4(1a) of the Act II of 1948 and, therefore, the notice as issued under Section 4(1a) stood lapsed consequently, the requisition and acquisition proceeding as initiated by the respondents/authorities in respect of the land of the writ petitioners stood vitiated.
7. It is submitted by Mr. Mandal that such factum was placed before the respondents/authorities under cover of the said representation dated 20.01.2017 and since such representation was not considered, the writ petitioners had to approach this Court in an earlier round of litigation by filing WPA 10779 of 2017.
8. Drawing attention to Page Nos. 21 and 22 of the instant writ petition, it is submitted by Mr. Mandal that by an order dated 18.11.2022, a co-ordinate Bench of this Court while disposing WPA 10779 of 2017 directed the respondent no. 5/authority herein to consider the aforementioned representation dated 20.01.2017 as submitted by the writ petitioners in accordance with law.
9. It is further submitted that in compliance of the said order dated 18.11.2022, the reasoned order under challenge is passed. It is further submitted that the respondent no. 5/authority while

passing the reasoned order has failed to visualize the true implication of the provision of Section 7A of the Act II of 1948 vis-à-vis to the provision of Section 9(3A) and (3B) of the Act I of 1894.

10. It is further submitted by Mr. Mandal that the instant writ petition is absolutely identical with the case as involved in WPA 17757 of 2024 (***Sadhan Narayan Kundu & Ors. Vs. The State of West Bengal & Ors.***) as disposed of by this Court by the judgment dated 20.05.2025. It is thus submitted by Mr. Mandal that appropriate relief/reliefs may be granted to the writ petitioners in terms of the prayers made in the instant writ petition.
11. *Per contra*, Mr. Batabyal, learned advocate appearing on behalf of the respondents/State in course of his submission draws attention of this Court to the report as submitted on behalf of the respondent nos. 3, 4 and 5 and as has been affirmed on 01.03.2024. It is submitted by Mr. Batabyal that from page no. 4 of the said report it would reveal that the possession of the relevant plot was taken on 07.08.1973 pursuant to a notice under Section 3(1) of Act II of 1948 and thereafter notice under Section 4(1a) of Act II of 1948 was published on 08.06.1979.
12. It is further submitted by Mr. Batabyal that the adequate payment could not be disbursed to the writ petitioners and/or their predecessors in interest on account of non-placement of fund by the requiring body. It is further submitted by Mr. Batabyal that the

a revised estimate to tune of Rs. 4,66,477/- has been prepared by the respondents/authorities and endeavor is made to disburse the said amount in favour of the writ petitioners.

13. Placing his reliance upon the reported decision of **Indore Development Authority vs. Manoharlal and Ors.** reported in **(2020) 8 SCC 129** it is argued by Mr. Batabyal that in view of the proposition of law as decided in the case of **Indore Development Authority (supra)** the case of the writ petitioners does not come under the purview of Section 24 of Act XXX of 2013 and, therefore, there cannot be any justification to hold that the order under challenge is contrary to the law.
14. It is further submitted by Mr. Batabyal that in the reported decision of **Union of India and Anr. vs. Subhash Chander Sehgal and ors.** reported in **2022 SCC OnLine SC 1059** the same proposition of law has been enunciated adopting the findings of the Hon'ble Supreme Court in the case of Indore Development Authority. It is thus submitted by Mr. Batabyal that it is a fit case for dismissal of the instant writ petition.
15. This Court has meticulously gone through the entire materials as placed before this Court. This Court has given its due consideration over the submissions of the learned advocates for the contending parties.

16. For effective adjudication of the instant writ petition this Court proposes to look to the relevant portions of the judgment dated 20.05.2025 in WPA 17757 of 2024 (Sadhan Narayan Kundu & Ors. Vs. The State of West Bengal & Ors.) as passed by this Court. The relevant portion of the case of **Sadhan Narayan Kundu (supra)** is quoted hereinbelow:

“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.

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 petitoners 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.”

17. Keeping in mind the observation as made by this Court in the case of **Sadhan Narayan Kundu (supra)** if I look to the factual aspects of this case it reveals to this Court that the instant writ petition is

more or less identical with the case of **Sadhan Narayan Kundu** (*supra*).

18. As rightly pointed out by Mr. Mandal that in terms of the provision of Section 7A of Act II of 1948 since no award has been passed by the respondent no. 2/authority within a period three years from the date of publication of notice under Section 4(1a) that is within three years from 08.06.1979 this Court has got no other alternative but to hold the said notice under Section 4 (1a) in connection with the land of the writ petitioners lapsed. Consequently, on account of such lapse of notice the vesting under Section 4(2) of Act II of 1948 got vitiated in respect of the land of the writ petitioners.
19. This Court has also occasioned to go through the provisions of Sections 9 (3A) and (3B) of Act I of 1894. It appears to this Court that the aforementioned Sections 9 (3A) and (3B) of Act I of 1894 has got no manner of application, in view of the fact that notice as published under Section 4(1a) of Act II of 1948 have already lapsed.
20. This Court must not be unmindful that in the case of **Sadhan Narayan Kundu** (*supra*) this Court directed the respondents/authorities to initiate the proceeding for acquiring land of the writ petitioners in terms of the provisions of Act XXX of 2013 in view of the situation as mentioned in the said judgment which is also identical with the instant writ petition.

21. In order to appreciate the argument of Mr. Batabyal this Court proposes to look to the provision of Section 24 of Act XXX of 2013 which is quoted hereinbelow in verbatim:

“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 subsection (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.”

22. On careful consideration of the aforementioned legislative mandate it appears to this Court that Section 24 takes care of the under mentioned two issues in case of land acquisition proceeding initiated under Act I of 1894 namely;

- (i) where no award under Section 11 of Act I of 1894 has been made then all provisions of Act XXX of 2013 would apply in determining the compensation;
- (ii) where an award under Section 11 has been made then such proceeding shall continue under the provisions of the Act I of 1894.

23. Section 24(2) of Act XXX of 2013 further mandates that in case of land acquisition proceeding initiated under Act II of 1894 where an award under Section 11 has been made five years or more prior to the commencement of the Act XXX of 2013 but physical possession of land has not been taken and the compensation has not been paid then the said proceeding would be deemed to have been lapsed and thereafter the appropriate Government shall have to

initiate proceeding land acquisition in accordance with the said Act of 2013.

24. It thus appears to this Court that the facts and circumstances as involved instant writ petition do not fall under any of the categories as mentioned in Section 24 of Act XXX of 2013 since this Court has already come to a finding that in terms of the provision of Section 7A of Act II of 1948 the land acquisition proceeding as has been initiated in respect of the land of the writ petitioners have already been vitiated.
25. This Court has meticulously gone through the two reported decisions as cited from the respondents/State that is the case of ***Indore Development Authority (supra)*** and ***Subhash Chander Sehgal (supra)***. In considered view of this Court the said two reported decisions have not dealt with the factual situation as involved in the instant writ petition.
26. This Court thus finds that the aforementioned two reported decisions as cited from the side of the respondents/State are distinguishable from the facts and circumstances of the instant writ petition.
27. In view of the discussion made hereinabove, this Court thus finds sufficient merit in the instant writ petition.
28. Consequently, WPA 18905 of 2023 is hereby allowed.

29. Consequently, the order under challenge dated 01.03.2023 as passed by the respondent no. 5/authority is hereby quashed.
30. Consequently, the respondent no. 5 is hereby directed to take appropriate steps for calculating the compensation for acquisition of the land of the present writ petitioners, particulars of which has been mentioned in paragraph no. 3 of the instant writ petition, as per the provisions of the Act XXX of 2013 and to complete such proceeding within 120 working days from the date of communication of the server copy of this order and to pay just compensation to the writ petitioners within four weeks thereafter.
31. 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. 5.
32. The respondent no. 5 is directed to act on the basis of the server copy of this order.
33. 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.)