

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

MAT 1878 of 2024

With

CAN 1 of 2024

**The Chairman, Kolkata Metropolitan Development
Authority**

Vs.

Pawan Kumar Chowdhury and Ors.

With

MAT 2294 of 2024

With

CAN 1 of 2024

CAN 2 of 2024

State of West Bengal and Ors.

Vs.

Sri Pawan Kumar Chowdhury and Ors.

For the Appellant-KMDA : Mr. Kishore Dutta, Ld. Adv. Gen.
In MAT 1878 of 2024 Mr. Satyajit Talukdar, Adv.
 Mr. Arindam Chatterjee, Adv.

For the Writ Petitioners/ : Mr. Debayan Bera, Ld. Sr. Adv.
Respondents Mr. Swapan Kumar Kar, Adv.

For the State in : Mr. Pantu Deb Roy, Ld. AGP.
MAT 1878 of 2024 Mr. Subrata Guha Biswas, Adv.

For the State/Appellants : Mr. Rabindra Narayan Dutta, Adv.
In MAT 2294 of 2024 Mr. Arkoday Mukherjee, Adv.

Hearing Concluded on : June 12, 2025
Judgement on : July 16, 2025

DEBANGSU BASAK, J.:-

1. Two appeals have been heard analogously as they emanate out of the same impugned judgement and order dated August 23, 2024 passed in WPA No. 10244 of 2016.
2. By the impugned judgement and order, learned Single Judge has set aside the acquisition in respect of the plots concerned and directed making over of possession thereof to the writ petitioners.
3. Learned Advocate General appearing for the appellants in MAT No.1878 of 2024 (hereinafter referred to as the first appeal for the sake of convenience) has referred to the sequence of events. He has submitted that, acquisition proceedings were initiated under the West Bengal Land (Requisition and Acquisition) Act, 1948 in 1986-87 in respect of the plots concerned. Possession of the plots along with other plots had been taken on May 24, 1988. Notification under Section 4(1a) of the Act of 1948 had been published in the Calcutta Gazette, Extraordinary on December 14, 1989. Since the acquisition proceedings could not be completed within the lifetime of the Act of 1948, the same had been

switched over to the Land Acquisition Act, 1894 by invoking the amended provisions of Section 9 (3B) of the Act of 1894.

4. Learned Advocate General appearing for the appellants in the first appeal has contended that, the acquiring authority issued a notice dated May 17, 2004 to the predecessors in interest of the writ petitioners as they were found to be the persons interested during the course of hearing under Section 9 (3B) of the Act of 1894. The writ petitioners had filed a representation dated December 19, 2004 to the notice dated May 17, 2004 claiming to be the purchasers of the subject land. Acquiring authority had declared the award on October 11, 2004.

5. Learned Advocate General appearing for the appellants in the first appeal has contended that, the writ petitioners filed a writ petition being WP No. 3719 (W) of 2005 challenging the notice dated May 17, 2004. Appellants in the first appeal were not made parties in such a writ petition. Such writ petition had been disposed of on February 1, 2010 holding that the notice dated May 17, 2004 cannot be said to be a notice under Section 9 (3B) of the Act of 1894 and that, the land were not acquired in accordance with law.

6. Learned Advocate General appearing for the appellants in the first appeal has submitted that, the judgement and order dated February 1, 2010 was challenged both by the appellants in the first appeal as well as the State separately. In such appeals, by a judgement and order dated January 3, 2013, the judgement and order dated February 1, 2010 of the learned Single Judge had been set aside. The writ petitioners had preferred a Special Leave Petition directed against the judgement and order dated January 3, 2013 which was disposed of on December 16, 2014 by granting liberty to the writ petitioners to move the authority in terms of the liberty granted by the High Court by its order dated January 3, 2013.

7. Learned Advocate General appearing for the appellants in the first appeal has contended that, the writ petitioners filed a fresh representation dated January 13, 2015. Such representation was disposed of by the concerned Collector on February 16, 2015 upholding the validity of the award declared on October 11, 2004 and holding that the writ petitioners were post vesting purchasers and therefore, the question of release of the land to them does not arise.

8. Learned Advocate General appearing for the appellants in the first appeal has contended that, challenging the decision of the Collector dated February 16, 2015 a writ petition being WPA 10244 of 2016 was filed by the writ petitioners which has resulted in the impugned judgement and order.

9. Learned Advocate General appearing for the appellants in the first appeal has contended that, upon publication of the notice under Section 4(1a) on December 14, 1989 of the Act of 1948 the land stood vested with the State under Section 4 (2) of the Act of 1948. Relying upon **2020 Volume 8 Supreme Court Cases 129 (Indore Development Authority vs Manoharlal and ors.)** learned Advocate General appearing for the appellants in the first appeal has contended that, land once vested cannot be divested unless there is a specific provision of law to such effect and that, there is no such provision either in the Act of 1894 or in the Act of 1948.

10. Learned Advocate General appearing for the appellants in the first appeal has submitted that, with the application of Section 4 of the Act of 1948 requisition ceases. By operation of Section 7A notice issued under Section 4(1a) of the Act of

1948 ceases, however, the vesting continues. He has referred to Section 9 (3B) of the Act of 1894 in support of his contention. He has contended that, upon issuance of the notice under Section 4(1a) of the Act of 1948 vesting continued with the State.

11. Learned Advocate General appearing for the appellants in the first appeal has contended that, vesting under Act of 1894 and under the Act of 1948 are completely different. According to him, vesting under the Act of 1894 takes place when possession is taken under Section 16 after compliance with the provisions contained in Sections 4, 5, 5A, 6, 9, 11 and 12 whereas vesting under the Act of 1948 is a fiction of law which takes place by publication of a notice under Section 4(1a) of the Act of 1948. He has compared the provisions of Section 7A of the Act of 1948 which provides that notice shall lapse while Section 11 A of the Act of 1894 which provides that the entire proceedings for the acquisition of the land shall lapse. He has pointed out that, Section 11 A of the Act of 1894 was inserted by the Land Acquisition (Amendment) Act, 1984 whereas Section 7A was inserted by the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1996. He has

contended that, despite being related amendment, Section 7A did not provide for lapsing of either vesting or the acquisition proceedings. Therefore, with the lapse of notice published under Section 7A the vesting remains untouched.

12. Learned Advocate General appearing for the appellants in the first appeal has contended that, presumption that with the lapse of notice under Section 4(1a) of the Act of 1948, the vesting lapses, is contrary to law. He has contended that, if the Legislature does not include what was virtually implied, it is assumed that it was excluded.

13. Relying upon **2012 Volume 12 Supreme Court Cases 133 (V. Chandrasekaran and Anr. vs. Administrative Officer and Ors.)** learned Advocate General appearing for the appellants in the first appeal has contended that, in view of the admitted case that possession was taken, the land stood vested and that the government cannot withdraw from the acquisition. After vesting what remains is assessment of compensation and that the date of reference is the main decisive factor. Since, notice under Section 4 (1a) of the Act of 1948 was published on December 14, 1989 the same will be

the date of reference for the purpose of assessment of compensation.

14. Learned Advocate General appearing for the appellants in the first appeal has contended that, the applicability of the provisions of Section 9 (3A) and 9 (3B) of the Act of 1894 is dependent upon the stage of the proceedings under the Act of 1948, that is, whether it is at the requisition stage or vesting stage. He has pointed out that the respective cut-off dates for assessment of market value of the land are mentioned in both the Sections.

15. Learned Advocate General appearing for the appellants in the first appeal has contended that, when Section 9 (3B) of the Act of 1894 is invoked, the provisions contained in Sections 4 to 8 and 16 thereof are deemed to have been complied with. He has contended that, when Section 9 (3A) of the Act of 1894 is invoked, the provisions contained in Sections 4 to 8 barring Section 16 of the Act of 1894 is deemed to have been complied with. Thereafter, the Collector has to make an award under Section 11 of the Act of 1894. According to him, Section 9 (3B) applies at the vesting stage whereas Section 9 (3A) applies at the requisition stage under

the Act of 1948. He has contended that, the intention of the legislature in incorporating the amended provisions of Sections 9 (3A) or Section 9 (3B) of the Act of 1894 is to provide an opportunity of hearing to the landowners before assessment of compensation. In the instant case, according to him, opportunity was granted by issuing a notice dated May 17, 2004 to the predecessor in interest of the writ petitioners and that, such predecessor in interest responded to such notice also. The writ petitioners cannot claim that such notice was nonest in the eye of law in absence of any statutory requirement in that regard.

16. Learned Advocate General appearing for the appellants in the first appeal has contended that the notice dated May 17, 2004 should be construed to be a notice under Section 9 (3B) of the Act of 1984 and the proceedings thereafter converted from the Act of 1948 to the Act of 1894. The award passed by the Collector on October 11, 2004 was within the prescribed time and that the same does not fall within the mischief of Section 11 A of the Act of 1894. Therefore, according to him, award is valid.

17. Learned Advocate General appearing for the appellants in the first appeal has contended that the writ petitioners claim to have purchased the land in the years 2000 to 2002. Notice under Section 4(1a) of the Act of 1948 having been published on December 14, 1989, the writ petitioners are post vesting transferees having no right to challenge the acquisition proceedings on any ground nor can they claim lapse of such proceedings. In support of such contentions, he has relied upon **1996 Volume 3 Supreme Court Cases 124 (U.P. Jal Nigam, Lucknow through its Chairman and Anr. vs. Kalra Properties (P) Ltd., Lucknow and Ors.)**, **1996 Volume 11 Supreme Court Cases 698 (Star Wire (India) Ltd. vs. State of Haryana and Ors.)**, **2013 Volume 14 Supreme Court Cases 737 (Bangalore Development Authority vs. Vijaya Leasing Limited and Ors.)**, **2008 Volume 9 Supreme Court Cases 177 (Meera Sahni vs. Lieutenant Governor of Delhi and Ors.)**, **2019 Volume 10 Supreme Court Cases 229 (Shiv Kumar and Anr. vs. Union of India and Ors.)**, **2022 Volume 10 Supreme Court Cases 519 (Delhi Development Authority vs. Damini Wadhwa and Ors.)**, **2024 Volume 3 Supreme Court Cases 731 (Delhi**

Development Authority vs. Narendra Kumar Jain and Ors., and ***2012 Volume 12 Supreme Court Cases 133 (V. Chandrasekaran and Anr. vs. Administrative Officer and Ors.)***.

18. Learned Advocate General appearing for the appellants in the first appeal has contended that, notice under Section 9 (3) and (4) of the Act of 1894 were admittedly issued to the writ petitioners. He has contended that there is no statutory format for a notice under Section 9 (3A) or 9 (3B) of the Act of 1894. Non-issuance of notice under Section 9 (3A) or Section 9 (3B) of the Act of 1894 would not legally vitiate any proceeding or affect the rights of the writ petitioners. He has contended that, absence of notice under Section 9 (3B) of the Act of 1894 did not cause any prejudice to the writ petitioners since notice under Section 9 (3) and 9 (4) of the Act of 1894 were served upon the writ petitioners. He has relied upon ***All India Reporter 1962 Mysore 169 (M/s. Hunuikeri Bros., vs. Asst. Commissioner, Dharwar Division, and Anr.)*** and ***2010 Volume 13 Supreme Court Cases 98 (May George versus Special Tahsildar and Others)*** in support of his contentions.

19. Learned Advocate General appearing for the appellants in the first appeal has drawn the attention of the court that pursuant to the order dated February 20, 2025 passed in the appeals, records of the land acquisition proceedings were produced. Inspection thereof had been taken on behalf of the writ petitioners. He has relied upon ***All India Reporter 1962 Mysore 169 (M/s. Hunuikeri Bros., vs. Asst. Commissioner, Dharwar Division, and Anr.) and May George (supra)*** in support of the proposition that, there is no statutory format for a notice under Section 9 (3) of the Act of 1894 and that, the writ petitioners have failed to demonstrate that they suffered any prejudice by the alleged non issuance of the notice under Section 9 (3B) of the Act of 1894.

20. Learned senior advocate appearing for the writ petitioners has referred to the various provisions of the Act of 1894 including Section 3 thereof. He has submitted that, the Act of 1894 was a temporary statute. Initially the life of statute was up to March 31, 1951. Thereafter, the life of the Act of 1948 had been extended from time to time and lastly till March 31, 1997. Thereafter, no further extension has been granted. He has pointed out that, the last extension was

granted by the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1994 which was published on March 31, 1994. He has pointed out that, the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1996 had been passed to amend the Act of 1948 to introduce Section 7A to the Act of 1948. Such amendment had come into force on and from April 1, 1994. He has contended that, by virtue of Section 7A of the Act of 1948, the Collector was required to declare the award within 3 years from the date of notification under Section 4 (1a) of the Act of 1948 and if such award was not made within such period, the notice shall lapse. He has pointed out that, under the proviso to Section 7A of the Act of 1948, in cases where such notice has been published more than 2 years before the commencement of the Amendment Act of 1994, an award shall be made within a period of one year from the date of commencement of that Act, that is to say that, where notices were published 2 years before April 1, 1994, the award was directed to be published on or before March 31, 1995 otherwise the notice for acquisition shall lapse.

21. Learned senior advocate appearing for the writ petitioners has submitted that Land Acquisition (West Bengal Amendment) Act, 1997 was enacted by which, Section 9, 11A, 23(1)(A) and 54 of the Act of 1894 were amended in its application to the State of West Bengal. He has contended that the purpose of the Amendment Act of 1997 was to complete the requisition and acquisition proceedings which were initiated under the Act of 1948 but could not be completed by publishing the award within March 31, 1997.

22. Learned senior advocate appearing for the writ petitioners has contended that, the vires of the first proviso sub-Section (3B) of the Act of 1894 as amended by the Amendment Act of 1997 was challenged by way of a writ petition. He has relied upon **2002 Volume 3 Calcutta High Court Notes 108 (Sabitri Devi and Others vs. State of West Bengal)** and contended that by a judgment and order dated December 24, 2001 passed in such writ petition it was held that, in cases where the notices under Section 4(1a) of the Act of 1948 stood lapsed on March 31, 1997 as per the provisions of Section 9(3B) of the Amendment Act of 1894 the proviso will not be attracted. It will be attracted only in cases

where the notices under Section 4(1a) of the Act of 1948 have survived March 31, 1997 and in all other cases, Section 9(3A) of the Act of 1894 will apply.

23. Learned senior advocate appearing for the writ petitioner has contended that, there was difference of opinion regarding lapse of notice under Section 4(1a) of the Act of 1948 between two co-ordinate Division Benches and the matter was referred to the Special Bench. He has referred to ***2011 Volume 3 CHN (CAL) 555 (State of West Bengal vs. Sabita Mondal)*** in this regard.

24. Learned senior advocate appearing for the writ petitioners has contended that appeals directed against ***Sabitri Devi And others (supra)*** were dismissed. Special Leave Petition filed by the State challenging the judgment and order dated June 17, 2011 of the Special Bench has been dismissed with the certain directions.

25. Learned senior advocate appearing for the writ petitioners has contended that, the Act of 1894 as applicable to the State of West Bengal was amended by the West Bengal Land Acquisition Laws (Amendment and Validation) Act, 2011 which was published in the Calcutta Gazette on May 19,

2012. By such amendment, validation of lapsed notices issued under Section 4(1a) of the Act of 1948 was sought to be made.

A Division Bench in **2013 Volume 1 CHN (CAL) 444 (Mandodari Bhakat vs. State of West Bengal)** has considered the issue and held that there was no question of validating any lapse proceedings.

26. Learned senior advocate appearing for the writ petitioners has submitted that, Special Leave Petition directed against **Mandodari Bhakat (supra)** was dismissed by a common judgment and order dated March 09, 2018. Supreme Court has observed that, it will be open for the State or the Acquiring Authority to take steps under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

27. Learned senior advocate appearing for the writ petitioners has contended that, the authorities on the subject were considered in **WP No. 6705 (w) of 2018 (Mahadeb Khan and Others. vs. The State of West Bengal and others).**

28. Referring to the merits of the case, learned senior advocate appearing for the writ petitioners has submitted

that, the Land Acquisition Collector had erroneously held that, the writ petitioners were post vesting purchasers. He has pointed out that the notification for the acquisition was issued on December 14, 1989 which is two years prior to the commencement of the Amendment Act on 1994. Therefore, the notice had lapsed on March 31, 1995 since no award was declared by that day. He has relied upon **Sabitri Devi And others** and **Sabita Mondal (supra)** in this regard. He has contended that, award cannot be declared resorting to Section 9(3A) or 9(3B). He has pointed out that, although the Collector claims that there was a notice under Section 9(3B) in fact, no such notice was ever issued. Moreover, according to him, notice for acquisition which stood lapsed on March 31, 1995 in view of **Sabitri Devi And others (supra)** and **Mandodari Bhakat (supra)** vesting did not continue. Therefore, the contention that the writ petitioners are post vesting purchasers are without any substance.

29. Learned senior advocate appearing for the writ petitioners has contended that, the vesting under the Act of 1948 is different from that of the Act of 1994. He has contended that, the Act of 1948 was a temporary statute

under which the acquisition proceeding was initiated. Schemes under the two Acts are completely different. Concept of vesting under the two Acts are different. He has pointed out that, both in ***Sabitri Devi And others (supra)*** and ***Mandodari Bhakat (supra)*** it was held that the vesting did not continue and that, in view of the lapse of the acquisition proceedings under Section 7A of the Act of 1948 title of the original owner revived.

30. Learned senior advocate appearing for the writ petitioners has contended that, the ratio of ***Indore Development Authority vs Manoharlal and ors. (supra)*** has no manner of application in the present case.

31. Learned advocate appearing for the State has adopted the submissions advanced by the learned Advocate General appearing for the appellants in the first appeal. He has also referred to the sequence of events with regard to the present proceedings. He has contended that, the writ petitioners are post vesting purchasers and have no right to challenge the acquisition proceedings. He has relied upon ***2024 Volume 4 Supreme Court Cases 721 (Delhi Development Authority versus Narendra Kumar Jain and others)*** and ***2023***

Volume 12 Supreme Court Cases 756 (Delhi Development Authority versus Shyamo and others) in support of such contention.

32. In or about 1986/1987 State had initiated acquisition proceedings of various plots of land at Mouza Pakuria, District Howrah, including the land involved in the present appeals, for West Howrah Township Project. Appearing parties have admitted that, acquisition proceedings were initiated under the provisions of the Act of 1948 in respect of the plots concerned in these appeals.

33. State had taken possession of the land in question by a possession certificate dated May 24, 1988 issued under Section 3 of the Act of 1948. State had issued a notification under Section 4(1a) of the Act of 1948 dated December 14, 1989 which was published in the Calcutta Gazette. By several registered deeds the writ petitioners had purchased the land in question from the recorded owners between the period March 10, 2000 and February 28, 2002. By a notice dated May 17, 2004, the Special Land Acquisition Officer (Howrah Improvement Trust), Howrah had intimated the writ petitioners that in course of hearing under Section 9 (3B) of

the Act of 1894, the writ petitioners were found to be persons interested and therefore they were directed to be present at the hearing. Writ petitioners filed representations dated December 19, 2004. An award dated October 11, 2004 had been declared.

34. The acquisition proceedings had commenced under the Act of 1948 and with the Act of 1948 coming to an end, the acquisition proceedings were sought to be continued under the Act of 1894. While State and the appellants in the first appeal have contended that, the continuation of the acquisition proceedings under the Act of 1894 is valid, the writ petitioners have contended that, State failed to continue with the acquisition proceedings under the Act of 1894 as the Act of 1894 was not invoked in accordance with law that is to say within the validity period of the Act of 1948 which the State and the appellants in the first appeal have contended that the land stood vested with the State on completion of the acquisition proceedings under the Act of 1894 the writ petitioners have contended the proceedings under the Act of 1948 stood lapsed with no valid migration to the Act of 1894 taking place as ordained by statute.

35. Issue is whether the invocation of the Act of 1894 in the facts and circumstances of the present case was within time or validly done or not.

36. Issue as to whether the migration of the acquisition proceeding from the Act of 1948 to the Act of 1894 as provided by law, in the facts and circumstances of the present case, was done or not, requires consideration, of both the law on the subject, as well as the events occurring between the parties.

37. The Act of 1948 came into being for the purpose of equipping the State with an expeditious mechanism for requisition and acquisition of land for certain purposes. It was conceived of as a temporary statute. Section 1(4) of the Act of 1948 laid down the terminal date of the statute. Originally, it was March 31, 1951. However such terminal date was extended from time to time. The last extension was by the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1994 which extended the life of the Act of 1948 till March 31, 1997.

38. In order to facilitate completion of the acquisition proceedings already initiated under the Act of 1948 and the

making and publishing of the award, and to allow migration from the Act of 1948 to the Act of 1894 prior to the Act of 1948 expiring by efflux of time, both the Act of 1948 as well as the Act of 1894 were amended.

39. By the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1996 which incorporated Section 7A into the Act of 1948. The Amendment Act of 1996 came into effect on and from April 1, 1994. Section 7A of the Act of 1948 is as follows: -

“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 to 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 commencement of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1994 (West Ben. Act XIV of 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.”

40. In one category Section 7A has carved out two categories for the purpose of making and publishing the award. Categorisation is on the basis of the duration of the time period between the date of the notice under Section 4(1a) of the Act of 1948 and the publication of the award. Section 7A of the Act of 1948 required the Collector to declare award within 3 years from the date of notification under Section 4 (1a) of the Act of 1948. It provided for the default in making the award within the stipulated period. Failure to make the award within the stipulated period resulted in the lapse of the notice under Section 4 (1a) of the Act of 1948.

41. In the second category Proviso to Section 7A of the Act of 1948 stipulated that, where the notice under Section 4 (1a) of the Act of 1948 was published more than 2 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 the Amendment Act of 1994. In other words, award must be published on or before March 31, 1995 in respect of the notices which were published two years before April 1, 1994 and on the failure to do so, the notices shall lapse.

42. State Government amended the Act of 1894 in its application to the State of West Bengal by the Land Acquisition (West Bengal Amendment) Act, 1997 with effect from April 1, 1997. Provisions of Section 9, 11A, 23 (1A) and 54 of the Act of 1894 were amended in order to complete the requisition and acquisition proceedings which were initiated under the Act of 1948 and could not be completed by publishing an award within March 31, 1997.

43. Sub Section (3B) of Section 9 of the Act of 1894 was amended by the Land Acquisition (West Bengal Amendment) Act, 1997 to introduce one proviso to the existing 2nd proviso to such sub section.

44. Relevant to the context of the present appeals are sub sub-Sections (3A) and (3B) of Section 9 of the Act of 1894 which are as follows: –

“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, 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 (1a) 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 (1a) of section 4 of the said Act shall be the date of reference for purpose of determining the value of such land under this Act:

Provided further that in every such case, the collection 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 where such land has, upon the Collector taking possession thereof, already vested absolutely in the Government, free from all encumbrances.”

45. The amendments introduced to the two statutes provide the migration gateway architecture for a requisition or

acquisition commencing under the Act of 1948 to be validly concluded under the Act of 1894. The gateway created allows one way traffic of migration from the Act of 1948 to the Act of 1894. The amendments mandated that failure to cross the gateway within the time specified would result in the lapse of the notice issued under the Act of 1948. In other words, failure to crossover would result in the proceeding under the Act of 1948 being rendered a nullity and void ab initio.

46. Vires of Section 9 (3B) of the Act of 1894 were considered in ***Sabitri Devi (supra)***. Learned single judge considered the interplay between the provisions of the Act of 1948 and the Act of 1894 which provided for the migration of acquisition proceedings from the Act of 1948 to the Act of 1894. It held that, once the proceedings under the Act of 1948 lapsed under Section 7A thereof, the same cannot be revived.

47. The Full Bench of the Calcutta High Court has considered the issue of lapse of requisition/acquisition proceeding and interplay of the two statutes in ***Sabita Mandal (supra)***. It held as follows: –

“19. Thus, the effect of the LAND ACQUISITION (WEST BENGAL AMENDMENT) ACT, 1997 which came into operation on the midnight between March 31, 1997 and April

1, 1997 prevented all those notices under sub-section (1a) of section 4 issued after April 1, 1994 from being lapsed by giving scope of revival by way of a notice under Sub-section (3B) of section 9 of the said Act if award had not been passed within three years from the date of publication of such notice and which would otherwise lapse if the said Act of 1997 would not come into operation at the midnight of March 31, 1997.

20. However, in respect of those notices under sub-section (1a) of section 4 which were issued prior to March 31, 1992 and in respect of which no award had been passed by March 31, 1995, those notices had already lapsed and by the Amendment Act 1997 of the Land Acquisition Act by the West Bengal Legislature, no provision has been made for revival of the lapsed notices which stood lapsed already on March 31, 1997 for non-compliance of the provision of Amendment Act of 1996. By the Amendment Act of 1997 only those notices under sub-section (1a) of section 4 which would have lapsed on the midnight of March 31, 1997 or on subsequent dates, have been saved.”

48. Issue of lapse of proceedings undertaken under the Act of 1948 was considered in **Mandodari Bhakat (supra)**. It considered the Full Bench decision of **Sabita Mandal (supra)** amongst other authorities, and held as follows: –

“46. It is significant to note that the validation is confined to notice issued under the Principal Act i.e. under the Land acquisition Act of 1894 as amended by Section 2 of 2011 Act inserting the second proviso and also as amended by section 3 of the 2011 Act antedating the commencement of 1997 Act are sought to be validated.

47. There is no question of validating any lapsed proceeding under section 7A of Act II of 1948 and by no imagination the 2011 Act having its retrospective commencement from 1st April, 1997 can be said to have revised and validated an acquisition which has lapsed on or before 31st March, 1995 by operation of section 7A of Act II of 1948.

48. It is to be noted that the laws providing for compulsory acquisition are confiscatory in nature depriving a person of his property without his consent and according to settled principles such laws are to be strictly construed and applied.

49. The learned Single Judge however, by the impugned judgment and order under appeal dismissed the writ petitions on the ground of delay which we are unable to accept since the impugned acquisition notice issued under Section 4(1a) stood lapsed due to non-publication of award by 31st March, 1995 as declared by the Special Bench on 17th June, 2011 and the writ petition was filed before this Court in the month of August, 2011. The learned Single Judge also held that the appellants/writ petitioners herein are post vesting purchasers which is not factually correct since the sale deeds in respect of most of the plots in question were executed in the year 1985 before the issuance of the notice of acquisition under section 4(1a). The notice of acquisition under section 4(1a) was issued on 1st December, 1988.

50. In any event, notice of acquisition issued in the present case under section 4(1a) had already lapsed by operation of law since the said notice under section 4(1a) was admittedly issued before 31st March, 1992 and no award had been passed by 31st March, 1995.

51. In view of lapsing of the acquisition proceedings under Section 7A of Act II of 1948, the title of the original owner revives. Even if any portion of the land covered by the notification issued under section 4(1a) was transferred subsequently to any third person namely, in favour of any one of the present appellants/petitioners then also after lapsing of the acquisition proceedings title of the original owner would revive. The subsequent purchaser and the original owner will thereafter be entitled to work out their respective rights in respect of the said land and we are not inclined to decide the same at this stage since it is beyond the scope of the present appeal.”

49. Supreme Court dismissed Special Leave Petition filed against ***Mandodari Bhakat (supra)*** being Special Leave to Appeal (C) Nos. 25739 of 2013, on March 9, 2018.

50. ***Mahadeb Khan (supra)*** followed ***Mandodari Bhakat (supra)***. It held that, introduction of sub-section (3A) and (3B) to Section 9 of the Act of 1894 does not save the lapse of the proceedings.

51. Migration architecture put in place by the Land Acquisition (West Bengal Amendment) Act, 1997 by introduction of sub-section (3A) and (3B) to Section 9 of the Act of 1894 dealt with both requisition and acquisition undertaken in terms of the Act of 1948. Sub-section (3A) dealt with a situation where, the proceeding under the Act of 1948

is at the requisition stage while sub-section (3B) dealt with the situation where the proceeding under the Act of 1948 is under the acquisition stage. Both the sub-sections required that notices be issued by the Collector to the persons interested. Both provided that, where the Collector made an award under Section 11 of the Act of 1894, the land shall vest absolutely with the government, free from all encumbrances.

52. Migration architecture for either a requisition or an acquisition proceeding to migrate from the Act of 1948 to the Act of 1894 requires a notice under Section 9 (3A) or 9 (3B) as the case may be. In both scenarios, once such notice is issued, the land would vest only upon an award being made in terms of Section 11 of the Act of 1894.

53. This migration architecture noted in the two previous paragraphs herein is required to be considered in light of Section 7A of the Act of 1948. Section 7A of the Act of 1948 mandated that the Collector make an award under Section 7 (2) within a period of 3 years from date of the publication of the notice in the official Gazette under sub-section (1a) of Section 4. It provided that, in the event, such award is not made within the period as stipulated therein, the notice under

Section 4 (1a) of the Act of 1948 would lapse. The proviso to Section 7A of the Act of 1948 allowed the award to be made within a period of one year from the date of commencement of the West Bengal Land Requisition and Acquisition (Amendment) Act, 1994, that is, 2 years from March 31, 1994.

54. Statutes noted above provide for the time period within which the Collector is required to make and publish the award in the scenarios specified. Default in making and publishing the award within the time period stipulated, causes lapse of the notice under Section 4 (1 a) of the Act of 1948.

55. Second proviso to sub-sections (3A) and (3B) of Section 9 of the Act of 1894 provide for vesting of the land only upon the Collector making an award under Section 11 thereof.

56. The net result of the interplay between the provisions of the Act of 1948 and the Act of 1894, as amended, in order to allow for the lapse of the Act of 1948 by efflux of time and to allow the continuation of requisition and acquisition proceedings initiated under the Act of 1948, once it ceases to have effect, is that, there has to be a notice under Section 9 (3A) or (3B) and an award passed within the time stipulated for the vesting to take place. In the event of non-compliance of

any of such statutory provisions, the notice under Section 4 (1 a) of the Act of 1948 stands lapsed.

57. Records produced in Court have established that, a notice claimed to be under Section 9 (3) and (4) of the Act of 1894 was issued to the writ petitioners on January 22, 2004 much after the lapse of the Act of 1948 on March 31, 1997. The award is claimed to have been declared on October 11, 2004.

58. Therefore, there is no notice under Section 9 (3A) and (3B) of the Act of 1894 within the validity period of the Act of 1948. Even if, one is to consider that, a notice under Section 9 (3) and (4) of the Act of 1894 to be a notice under Section 9 (3A) and (3B) thereof, then also, such notice in the facts and circumstances of the present case is beyond the stipulated period of the validity of the Act of 1948.

59. We hasten to add that, we are not suggesting or subscribing to the view that, a notice under Section 9 (3) or (4) of the Act of 1894 can or should be construed as a notice under Section 9 (3A) and/or (3B) thereof as, such issue need not be decided in the facts and circumstances of the present case.

60. In the facts and circumstances of the present case, no notice under Section 9 (3A) or 9 (3B) of the Act of 1894 was issued within the validity period of the Act of 1948 for the Collector to make and publish an award within the validity period prescribed under Section 7A of the Act of 1948.

61. By reason of the absence of notice under Section 9 (3A) or 9 (3B) the notice under Section 4 (1 a) of the Act of 1948 stood lapsed as on March 31, 1997, when the last date to which, the Act of 1948 was valid.

62. On the expiry of March 31, 1997 with no valid migration taking place from the Act of 1948 to the Act of 1894 in respect of the acquisition proceedings of the plots concerned, the notice under Section 4 (1a) of the Act of 1948 stood lapsed.

63. In our view, once, the notice under Section 4 (1a) of the Act of 1948 lapses then, all steps taken prior and post thereto under the Act of 1948 stands nullified. Rights, title and interest of the parties existing on the date on which, the requisition proceedings were initiated under the Act of 1948 revives. In the eye of law, the land in question is required to be

treated as belonging to the owners as on the date of the initiation of the proceeding.

64. State not complying with the mandatory provisions relating to migration from the Act of 1948 to the Act of 1894 cannot be allowed to take shelter under the plea that, land stood vested with the issuance of the notice under Section 4 (1 a) of the Act of 1948. Vesting as provided under Section 4 of the Act of 1948 is subject to the acquisition proceedings being completed within the validity period of the Act of 1948 and in the event of failure to do so, then, within the time stipulated for a valid migration of the proceedings from the Act of 1948 to the Act of 1894.

65. It is in this context, the 2nd proviso to sub sections (3A) and (3B) of Section 9 of the Act of 1894 assumes significance since it prescribes that, the award needs to be made under Section 11 of the Act of 1894 for the land to vest with the State, free from all encumbrances.

66. Therefore, there must be a valid migration from the Act of 1948 to the Act of 1894 and an award passed under Section 11 of the Act of 1894 for a valid vesting to take place. Vesting contemplated under Section 4 of the Act of 1948 will occur

only if, the acquisition proceedings are completed within the validity period of the Act of 1948 or on valid migration from the Act of 1948 to the Act of 1894.

67. In light of the discussions above, we are unable to subscribe to the view of the appellants in the first appeal and the State that, the land stood vested with the State and that, the writ petitioners are to be considered as post-vesting purchases and therefore without any right to challenge the acquisition proceedings. Right, title and interest of the vendors of the writ petitioners, to the subject plots, revived immediately on lapse of the notice under Section 4 (1a) of the Act of 1948 on March 31, 1997. Therefore, the vendors of the writ petitioners possessed right, title and interest in respect of the plots concerned to sell to the writ petitioners.

68. Since the writ petitioners cannot be said to be post-vesting purchasers, as, on the date of purchase by the writ petitioners, there was no vesting in the eye of law, the ratio laid down in ***U.P. Jal Nigam, Lucknow through its Chairman and Anr (supra), Star Wire (India) Ltd. (supra), Bangalore Development Authority (supra), Meera Sahni (supra), Shiv Kumar and Anr. (supra), Damini Wadhwa***

and Ors. (supra), Narendra Kumar Jain and Ors. (supra), V. Chandrasekaran and Anr. (supra), Narendra Kumar Jain and others (supra) and Shyamo and others (supra) are not attracted in the facts and circumstances of the present case.

69. Similarly, since there is no vesting and since, there is no valid award in the eye of law, the ratio laid down in **Indore Development Authority (Lapse-5) (supra)** are not attracted in the facts and circumstances of the present case. Likewise, **V. Chandrasekaran (supra)** is not applicable. Post March 31, 1997, there being no vesting in the eye of law, possession of the State or any other authority, over the subject plots, claiming rights under the Act of 1948 or the Act of 1894, is illegal.

70. Ratio laid down in **M/s. Hunuikeri Bros., (supra)** and **May George (supra)** are not attracted since, State did not take appropriate steps within the validity period of the Act of 1948.

71. In view of the discussions above, we find no merit in the present appeals.

72. MAT 1878 of 2024 and MAT 2294 of 2024 along with all connected applications are disposed of without any orders to cost.

[DEBANGSU BASAK, J.]

73. I agree.

[MD. SHABBAR RASHIDI, J.]