

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Justice PARTHA SARATHI SEN

WPA 31089 of 2013

Chandana Mondal

Vs.

State of West Bengal & Ors.

For the petitioner :

Mr. Amit Kr. Pan, Adv.,
Mr. Sabir Ahmed, Adv.,
Mr. Tasnim Ahmed, Adv.,
Mr. Dhiman Banerjee, Adv.,
Mr. Ezaz Ahmed Adv.

For the State:

Mr. Soumitra Bandyopadhyay, Sr. Adv.
Mr. Aniruddha Sen, Adv.

Hearing concluded on: 17.03.2025.

Judgment on: 17.03.2025.

PARTHA SARATHI SEN, J. : -

1. By filing the instant writ petition, the writ petitioner though prayed for issuance of appropriate writ/writs for quashing and/or setting aside the proceeding being Case No. LDP/3/89/II/48 pursuant to the notification dated 11.01.1989 but in course of hearing Mr. Pan, learned advocate appearing on behalf of the writ petitioner submits before this Court that the relief as prayed for in the instant writ petition may be modified by quashing and/or setting aside the award in connection with the said proceeding as has been annexed at Page

No. 11 of the supplementary affidavit of the respondent nos. 1, 2 and 3 as affirmed on 18.04.2022 since the writ petitioner at the time of filing of the instant writ petition was not aware that pursuant to the said proceeding being LDP/3/89/II/48 an award has already been published under the provisions of West Bengal Land Development and Planning Act, 1948 (hereinafter referred to as 'the said Act of 1948').

2. For effective adjudication of the instant *lis*, some admitted facts are required to be dealt with in seriatim and those are as under:

- i) on 31.12.2012, the writ petitioner purchased 2 cottah and 8 chittaks of bastu land with a R.T. shed structure in R.S. Plot No. 45 in Mouza – Garfa from her vendor Kamal Dasgupta.
- ii) in respect of the said plot of land along with the other land, a gazette notification was published on 11.01.1989 under Section 4 of the said Act of 1948.
- iii) on 08.01.1991, a declaration was published in official gazette under Section 6 of the said Act of 1948.
- iv) both in the said notification as well as in the declaration, the R.S. Plot No. 45 of the self-same Mouza was the subject matter.
- v) pursuant to the said notification and declaration under the said Act of 1948, the appropriate authority proceeded under Section 8 of the said Act of 1948 and thus, published an award

in connection with Case No. LDP/3 of 1989 in respect of entire acquired land to the extent of 0.554 acre in the said Mouza.

vi) the legality, validity and correctness of the said award is now under challenge in the instant writ petition.

3. In course of his argument, Mr. Pan learned advocate appearing on behalf of the writ petitioner at the very outset draws attention of this Court to the said two notifications as published under Sections 4 and 6 of the said Act of 1948 as have been annexed at Pages 7 and 8 and Page 10 of the supplementary affidavit dated 18.04.2022 filed by the respondent nos. 1, 2 and 3.
4. At this juncture, Mr. Pan draws attention of this Court to the provisions of Section 8 of the said Act of 1948.
5. In order to arrive at a logical conclusion of the instant lis this Court considers that the provisions of Section 8 of the said Act of 1948 is required to be looked into and the same is quoted hereinbelow in verbatim:

“8. Application of Act I of 1894 subject to special provision for compensation.

“(1) After making a declaration under section 6 the State Government may acquire the land and thereupon the provisions of the Land Acquisition Act, 1894 (hereinafter in this section referred to as the said Act), shall, so far as may be, apply :

Provided that-

(a) if in any case the State Government so directs, the Collector may, at any time after a declaration is made under section 6, take possession, in accordance with the rules, of any beel, baor, tank or other watery area, or any waste or arable land in respect of which the declaration is made and thereupon such land shall vest absolutely in the Government free from all encumbrances.

(b) in determining the amount of compensation to be awarded for land acquired in pursuance of this Act the market value referred to in clause first of sub-section (1) of section 23 of the said Act shall be deemed to be the market value of the land on the date of publication of the notification under sub-section (1) of section 4 for the notified area in which the land is included subject to the following condition, that is to say,

-if such market value in relation to land acquired for the public purpose specified in sub-clause (i) of clause (d) of section 2, exceeds by any amount the market value of the land on the 31st day of December, 1946, on the assumption that the land had been at that date in the state in which it in fact was on the date of publication of the said notification, the amount of such excess shall not be taken into consideration.

(2) When the amount of 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 said Act, and the amount referred to in sub-section (2) of section 23 of the said Act shall also be included in the award."

6. It is submitted by Mr. Pan that on perusal of Section 8 of the said Act of 1948, it would reveal that it is the intention of the legislature that for the purpose of acquisition under Section 8 of the said Act of

1948 the provisions of the Land Acquisition Act of 1894 (hereinafter referred to as 'the Act I of 1894') would apply subject to certain conditions as mentioned in proviso (a) and (b) of Section 8 of the said Act of 1948.

7. In his next limb of submission, Mr. Pan places his reliance upon a reported decision of the Hon'ble Supreme Court in the case of ***The State of West Bengal Vs. Mrs. Bela Banerjee & Ors.*** reported in ***(1954) SCR 558***. It is submitted by Mr. Pan that in the reported decision of ***Mrs. Bela Banerjee (supra)***, the Hon'ble Apex Court expressly held that the latter part of proviso (b) of Section 8(1) of the said Act of 1948 which fixes the market value as on December 31, 1946 as the maximum compensation for lands acquired is violative of the provision of Article 31(2) of the Constitution of India and is thus held unconstitutional and void.
8. At this juncture, Mr. Pan draws attention of this Court to Section 11A of the Act I of 1894. It is submitted by Mr. Pan that Section 11A of the Act I of 1894 makes it obligatory on the part of the collector to make an award within a period of two years from the date of publication of the declaration and the said statute specifically provides that if no award is made within that period, the entire proceeding of the said acquisition of land shall lapse.
9. It is thus submitted by Mr. Pan that in view of the proposition of law as decided in the case of ***Mrs. Bela Banerjee (supra)*** and in view of the fact that no fresh award has been published pursuant to the

provisions of Section 8 of the said Act of 1948 within the stipulated period in respect of Plot No. 45 in Mouza – Garfa, the said acquisition proceeding stood lapsed and therefore, the entire acquisition proceeding as has been initiated by publication of the notification under Section 4 of the said Act of 1948 and as has been declared under Section 6 of the said Act of 1948 may be declared cancelled and quashed and/or the said acquisition proceeding may be set aside. In course of his submission Mr. Pan also places his reliance upon a reported decision of ***State of West Bengal & Ors. Vs. Aziman Bibi & Ors.*** reported in ***2016 (15) SCC 710***.

10. Per contra, Mr. Bandyopadhyay, learned Senior Advocate appearing on behalf of the respondent nos. 1, 2 and 3 i.e., the State and its functionaries at the very outset submits before this Court that the writ petitioner has got no *locus standi* to file the instant writ petition inasmuch as on the date of filing of the instant writ petition, he has got no right, title and interest over the said plot no. 45. It is submitted further that since the writ petitioner purchased the property-in-question in R.S. Plot No. 45 on 31.12.2012 and since the land acquisition as per the provision of the said Act of 1948 was completed on 22.05.1992 by publication of award preceded by notification under Section 4 and declaration under Section 6 of the said Act of 1948, the land in question in the said plot of land stood vested with the State and, therefore, the writ petitioner's vendor had

got no marketable title to execute the deed of conveyance in favour of the present writ petitioner.

11. It is thus submitted by Mr. Bandyopadhyay that on the day of filing of the instant writ petition and even prior to that i.e. on 31.8.2012 the writ petitioner was not the owner of the property in question.
12. It is further submitted by Mr. Bandyopadhyay that since the transaction between the writ petitioner and her vendor was void the writ petitioner cannot challenge the legality, validity and correctness of the award as published on 22.5.1992.
13. Drawing attention of this Court to the various pages of the supplementary affidavit as affirmed on 18.4.2022, Mr. Bandyopadhyay contended that the publication of notice under Section 4, publication of declaration under Section 6 and publication of the award under Section 8 of the said Act on 1948 were completed in accordance with the provisions of the said Act of 1948 read with Act 1 of 1894, and, therefore, by no stretch of imagination it can be said that the said award is void.
14. Mr. Bandyopadhyay in course of his submission places reliance upon the following two reported decisions namely, ***V. Chandrasekaran & Another vs. Administrative Officer and Others*** reported in (2012) 12 SCC 133 and ***Shiv Kumar and Another vs. Union of India and Others*** reported in (2019) 10 SCC 229.
15. It is submitted by Mr. Bandyopadhyay that in the reported decision of ***Chandrasekaran (supra)***, the Hon'ble Apex Court expressly held

that a subsequent purchaser has got no right to challenge the acquisition proceeding since the sale deed as has been executed in favour of the said purchaser after completion of the acquisition proceeding does not confer any title and thus the said subsequent purchaser at best can claim compensation on the basis of the vendor's title.

16. In this regard Mr. Bandyopadhyay, further submits that the writ petitioner is not entitled to any compensation also in as much as the writ petitioner's vendor had already received the compensation in terms of the award as published in connection with the said acquisition proceeding under the said Act of 1948. It is further submitted by Mr. Bandyopadhyay that in the reported decision of ***Shiv Kumar (supra)*** the Hon'ble Apex Court expressed the following:

“Thus, under the provisions of Section 24 of the 2013 Act, challenge to acquisition proceeding of the taking over of possession under the 1894 Act cannot be made, based on a void transaction nor declaration can be sought under Section 24(2) by such incumbents to obtain the land. The declaration that acquisition has lapsed under the 2013 Act is to get the property back whereas, the transaction once void, is always a void transaction, as no title can be acquired in the land as such no such declaration can be sought. It would not be legal, just and equitable to give the land back to purchaser as land was not capable of being sold which was in process of acquisition under the 1894 Act. The 2013 Act does not confer any right on purchaser whose sale is ab initio

void. Such void transactions are not validated under the 2013 Act. No rights are conferred by the provisions contained in the 2013 Act on such a purchaser as against the State.”

17. Mr. Bandyopadhyay, thus, submits that it is a fit case for dismissal of the instant writ petition.
18. This Court has meticulously perused the entire materials as placed before this Court. This Court has given its due consideration over the submission of learned advocate for the contending parties.
19. Since it has been contended by Mr. Pan in course of his argument that the proviso (b) of Section 8(1) of the said Act of 1948 is found to be unconstitutional in the case of ***Mrs. Bela Banerjee and Others (supra)*** by the Honb’ble Supreme Court, this Court proposes to look to the relevant portions of the said reported decision of ***Bela Banerjee (supra)*** and those are quoted hereinbelow in verbatim :-

“The provision making the declaration of the Government conclusive as to the public nature of the purpose of the acquisition and the limitation of the amount of compensation so as not to exceed the market value of the land on December 31, 1946, were declared ultra vires the Constitution and void.”

.....

“We are accordingly hold that the latter part of proviso (b) to section 8 of the impugned Act which fixes the market value on December 31, 1946, as the maximum compensation for lands acquired under it offends against the provisions of

article 31(2) and is unconstitutional and void. The appeal is dismissed with costs.”

20. It is pertinent to mention herein that in the reported decision of ***Bela Banerjee (supra)*** the entire Section 8 of said Act 1948 was not declared ultra vires and / or unconstitutional and, therefore, the legislative intent with regard to the applicability to the provisions of the Act 1 of 1894 in case of acquisition proceeding as initiated under the said Act 1948 other than proviso (b) of Section 8 (1) remains untouched. At this juncture, this Court proposes to look to the provision of Section 11 A of the Act 1 of 1894 and the same is quoted below in verbatim.

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

The collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984), the award shall be made within a period of two years from such commencement.

Explanation – In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of time said declaration is stayed by an order of a Court shall be excluded”

21. On perusal of the provision of Section 11 A of the said Act of 1894, it thus appear to this Court that it is the legislative intent that it is obligatory on the part of a collector to make an award under Section 11 of the said Act of 1 of 1984 within a period of two years from the date of the publication of the declaration and in the event no award is made within that period the entire proceeding for acquisition of the land stood lapsed.
22. Admittedly, the provision of the Act 1 of 1894 including the provision of Section 11A of the said Act applies mutatis mutandis in respect of land acquisition proceeding under the said Act of 1948 except Clause (b) of proviso of Section 8(1) as discussed hereinabove.
23. At this juncture, if I look to the page 10 of the supplementary affidavit as filed on behalf of the respondent nos. 1, 2 and 3 it reveals that the declaration under Section 6 of the said Act of 1948 was published on 08.01.1991 and the award thereupon was published on 22.5.92 placing reliance upon Clause (b) of Proviso of Section 8 (1) of the said Act of 1948 which has not been disputed by the respondent State and even the same was also not disputed in course of his argument by Mr. Bandyopadhyay, appearing on behalf of the respondent nos. 1,2 & 3. As a natural corollary, this Court has got no hesitation to hold that the award as published on 22.5.92 cannot be held to be valid since it was passed as per provision which was declared unconstitutional.

24. In course of his argument, Mr. Bandyopadhyay was very vocal with regard to the locus standi of the present writ petitioner in as much as the writ petitioner purchased the property in question in the said R.S. Plot No. 45 subsequent to the publication of the notification and declaration i.e. on 31.12.2012. It was strenuously argued by Mr. Bandyopadhyay that at that material time the vendor of the writ petitioner had got no marketable title since the schedule mentioned property of the said deed stood vested on account of acquisition on the day of execution and registration of the deed of conveyance.
25. Admittedly, the Hon'ble Apex Court in the said reported decisions of ***Chandrasekaran (supra)*** and ***Shiv Kumar (supra)*** expressly held that a subsequent purchaser after publication of the notification under Section 4 has got no right to challenge the validity of the acquisition proceeding.
26. However, in considered view of this Court, the facts and circumstances as involved in the instant writ petition are quite different and distinguishable from the facts as involved in the reported decision of ***Chandrasekaran (supra)*** and ***Shiv Kumar (supra)*** in as much as the said two decisions deals with valid acquisition proceeding whereas in the instant case this court finds sufficient material to come to a finding that the award as has been passed pursuant to the provision of the said Act of 1948 is held to be unconstitutional and, therefore, the entire acquisition proceeding is

bad in law and thus the title of the vendor of the writ petitioner reverts back to him.

27. At this juncture, I propose to look to Section 43 of the transfer of property Act 1882 which is quoted hereinbelow in verbatim:-

“43. Transfer by unauthorized person who subsequently acquires interest in property transferred- *Where a person fraudulently or erroneously represents that he is authorized to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transferor may acquire in such property at any time during which the contract of transfer subsists.*

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.”

28. It thus appears to this Court that Section 43 of the Transfer of Property Act, 1882 makes it clear that even if a transfer is made by an unauthorized person and in the event the transferor subsequently acquires interest in the said property which has been transferred by him, the transferee becomes entitled to it if the transfer has not been thrown up or cancelled and is subsisting. In other words unless the transferee intends to avoid such transfer the transferor on acquisition of subsequent interest cannot disown such transfer.

29. This Court is conscious that '*doctrine of feeding the estoppel*' has got no manner of application in a land acquisition proceeding. It is also not the case of the writ petitioner that taking advantage of lapsed acquisition proceeding, her vendor is making an attempt to disown her title over the said plot of land.
30. However the same has become relevant since an attempt has been made by the respondent/State to disown the locus standi of the writ petitioner on the ground that no title passed in favour of the writ petitioner by virtue of the registered deed of conveyance dated 31.12.2012 since the alleged acquisition proceeding was completed much prior to the said day.
31. This Court further considers that admittedly in the prayer of the original writ petition, the writ petitioner, made no prayer for setting aside the award and / or the entire acquisition proceeding. Such prayer has been made after filing of the supplementary affidavit by the respondent/State on account of disclosure of alleged document of completion of acquisition proceeding and publication of award.
32. It is a settled proposition of law that while granting an equitable remedy to a litigant this writ court being a court of equity can very well mould the relief and in doing so this Court while allowing the instant writ petition declares that the award dated 22.5.1992 as inoperative and the same is thus set aside.
33. Consequently, all proceedings as initiated in connection with LDP/3/89/II/48 stands hereby quashed and set aside.

34. The instant writ petition is thus disposed of in the light of the observation made hereinabove.
35. All pending connection applications, if there be any, stand hereby disposed of.
36. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon completion of requisite formalities.

(Partha Sarathi Sen, J.)

37. After passing of the judgement, learned counsel appearing on behalf of the respondent / State prays for limited stay of the operation of the judgement as passed by this Court today.
38. Prayer for stay is considered and is disallowed.

(Partha Sarathi Sen, J.)