

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Hiranmay Bhattacharyya

W.P.A. 24769 of 2025

Satya Patra & Ors.

Vs.

The State of West Bengal & Ors.

For the Petitioners

: Mr. Amit Kumar Pan
Ms. Tanusri Santra

For the State

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

For the respondent Nos.5 & 6

: Mr. Ayan Banerjee

Heard on

: 20/03/2026

Judgment on

: 20/03/2026

Hiranmay Bhattacharyya , J. :

1. The petitioners claim to be the recorded owners of R.S. Plot No.46 within Mouza-Kalua, J.L. No.22 under Police Station-Behala (presently Haridevpur) in the District of South 24-Parganas.
2. The petitioners state that the aforesaid property was requisitioned by passing an order under Section 3(1) of the West Bengal (Requisition & Acquisition) Act, 1948 being L.A. Case No.LA-II/71 of 1976-77. Subsequently a notice under Section 4

(1)(a) of the 1948 Act was published in the Calcutta Gazette on August 26, 1981 for acquiring the same. The petitioners allege that though the property of the petitioners has been utilised for the purpose for which it was requisitioned and subsequently steps were taken for acquisition but no award was passed under the provisions of the 1948 Act. The petitioners further allege that no compensation has been paid to the petitioner till date though the property has been utilised for a public purpose.

3. Mr. De, learned Additional Government Pleader appears for the respondent Nos.1 to 4 and Mr. Banerjee appears for the respondent Nos.5 and 6. The learned advocates representing the respondents submit that the writ petition is liable to be dismissed only on the ground of delay and laches.
4. Mr. De, learned Additional Government Pleader places reliance upon the decision of the Hon'ble Supreme Court in the case of ***State of Maharashtra vs. Digambar***, reported at **(1995) 4 SCC 683**.
5. In reply, Mr. Pan, learned advocate for the petitioners places reliance upon a decision of the Hon'ble Supreme Court in the case of ***Vidya Devi vs. State of Himachal Pradesh & Ors.***, reported at **(2020) 2 SCC 569**.
6. It is not in dispute that the property of the petitioners was requisitioned by invoking the provisions of Section 3(1) of the 1948 Act. Though the notice under Section 4(1a) of the 1948 Act

was issued but no material has been produced before this Court to show that any award was passed under the 1948 Act within the lifetime of the said Act. It is also not the case of the respondent authorities that the process of acquisition which was initiated under the 1948 Act was carried forward either by invoking the provision of Section 9(3A) or 9(3B) of the Land Acquisition (West Bengal Amendment) Act 1997. Since no award was passed within the time limit specified under the 1948 Act the notice of acquisition stood lapsed.

7. The Land Acquisition Act, 1894 stood repealed with the coming into force of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "the 2013 Act) which came into force on and from January 1, 2014. No proceeding appears to have been initiated for acquisition of the property which has been utilised by the respondent authorities even after coming into force of the 2013 Act.
8. Since the state has urged for dismissal of the writ petition on the ground of undue delay and laches on the part of the writ petitioners, this Court shall decide such issue first before entering into the merits of the case.
9. In **Digambar** (supra), a large scale scarcity relief works had to be undertaken by the State in order to provide employment to small agriculturists and agricultural labour of 23, 000 villages in the

State of Maharashtra when acute scarcity conditions prevailed in those villages during the year 1971-72. Such relief works included 38,000 kms. of road works. As the State Government was not in a position to divest funds at its disposal for payment of compensation for lands to be utilized in road works, Collectors, put in charge of such works were instructed not to accord sanction to them without ensuring that they did not involve any payment of compensation by the Government. Collectors, were, indeed, specially instructed to impress upon non-official and other social workers to use their good offices in ensuring that the land required for such scarcity relief works were donated to the Government without any claim for compensation.

10. About 192 writ petitions were filed with common allegations and seeking common relief. The allegation was that although a certain extent of their land was taken away by the agency of the State for the scarcity relief road works to find work for small agriculturists in the then prevailing severe drought conditions without their consent and they were not compensated therefor, despite requests made to the State Government.
11. In the backdrop of such factual matrix, the Hon'ble Supreme Court held that undue delay of 20 years on the part of the writ petitioner, in invoking the High Court's extraordinary jurisdiction under Article 226 of the Constitution of India for

grant of compensation would suggest that the land was not taken at all or if it had been taken it could not have been taken without his consent or if it was taken against his consent he had acquiesced in such taking and waived his right to take compensation for it. On the facts of that case it was held that the allegations made in the writ petition was not sufficient to hold that the writ petitioners therein had satisfactorily explained the delay.

12. The said decision cannot come to the aid of the respondents as it is not the case of the State that sanction for the work for which the lands in question have been utilized was accorded only after ensuring that the lands required were donated to the Government without any claim for compensation.
13. The Hon'ble Supreme Court in **Vidya Devi** (supra) took note of the several decisions of the Hon'ble Supreme Court including the decision in the case of **Tukaram Kana Joshi vs. MIDC**, reported at **(2013) 1 SCC 353**. In paragraph 11 of the decision in the case of **Tukaram Kana Joshi** (supra), the Hon'ble Supreme Court held thus:-

“11. There are authorities which state that delay and laches extinguish the right to put forth a claim. Most of these authorities pertain to service jurisprudence, grant of compensation for a wrong done to them decades ago, recovery of statutory dues, claim for educational facilities and other categories of similar cases, etc. Though, it is true that there are few authorities that lay down that delay and laches debar a citizen from seeking remedy, even if his fundamental

right has been violated, under Article 32 or 226 of the Constitution, the case at hand deals with a different scenario altogether. The functionaries of the State took over possession of the land belonging to the appellants without any sanction of law. The appellants had asked repeatedly for grant of the benefit of compensation. The State must either comply with the procedure laid down for acquisition, or requisition, or any other permissible statutory mode.”

(emphasis supplied)

14. After noticing several decisions, the Hon'ble Supreme Court in **Vidya Devi** (supra) held that delay and laches cannot be raised in a case of a continuing cause of action or if the circumstances shock the judicial conscience of the Court. It was further observed by the Hon'ble Supreme Court that condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case. It will depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. It was further observed that there is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice.
15. In the case on hand it is the specific stand of the State as reflected by their status report that the possession of the land was taken and the same was handed over to the Requiring Body. The requisition under the 1948 Act is for a temporary purpose and if the same is required for any permanent purpose, it was

for the State to invoke the provisions of Section 4 of the said Act to acquire the same.

16. In the case on hand though steps for acquisition was initiated by invoking the provision of Section 4(1)(a) but no award was passed during the lifetime of the 1948 Act and no further steps for acquisition either under the 1997 Amendment Act of 1894 or the 2013 Act has been taken till date.
17. However, admittedly the property has been utilised for a purpose which, by no stretch of imagination, can be said to be for temporary purpose. The welfare State cannot take away the property of a citizen and utilise the same and then turn around and take the plea of delay and laches only to avoid payment of fair compensation for the property utilised by the authorities for a public purpose.
18. The action on the part of the respondent authorities in the case on hand shocks the judicial conscience of this Court. The cause of action is continuing one and for such reason, this Court is not inclined to dismiss the writ petition at the threshold.
19. For such reason, this writ petition is entertained as the demand for justice is so compelling that this Court exercising the power under Article 226 of the Constitution of India has to see that the justice is promoted.
20. The question that now falls for consideration is whether the petitioners are entitled to compensation under the 2013 Act.

More or less identical issue fell for consideration before this Court in the case of ***Jamaluddin Momin vs. State of West Bengal & Ors.***, reported at **2024 CHC AS 2005**, wherein this Court after considering various decisions as well as provisions of the 1948 Act, 1894 Act and the 2013 Act held that as the State has utilised the land and is not in a position to restore possession of land to the petitioners/land owners and also that the proceeding under the 1948 Act stood lapsed. The State/respondent should be directed to initiate a proceeding for acquisition afresh in accordance with the 2013 Act and to complete the same within a stipulated time.

21. This Court held thus:-

13. At this stage it would be beneficial to recapitulate the relevant provision of the 1948 Act which is extracted hereinafter.

"4. 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 subsection (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."

14. The 1948 Act was amended by the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1994 which was published in the Calcutta Gazette on 31.03.1994. By virtue of the said Amendment Act, Section 3 of the 1948 Act was omitted. Therefore, the

power of the State to requisition any land was taken away by virtue of the Amendment Act, 1994 with effect from 01.04.1994. The validity of the 1948 Act was also extended till 31.03.1997 by virtue of the said Amendment Act.

15. The 1894 Act was also amended by W.B. Act VII of 1997 in its application to the State of West Bengal. By virtue of such amendment, sub-sections (3A) and (3B) were incorporated after Section 9(3) of the 1894 Act.

16. Sub-sections (3A) and (3B) of Section 9 of the 1894 Act as incorporated by way of amendment is extracted hereinafter.

"(3-A) 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 5-A, 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.

(3-B) 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 5-A, 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."

17. Section 9(3B) comes into play where notice under Section 4(1a) of the 1948 Act has been issued. Since admittedly notice under Section 4(1a) has not been issued in the case on hand, Section 9(3B) do not have any manner of application.

18. Section 9(3A) states that in a case where possession has already been taken on requisition under Section 3 of the 1948 Act, the provisions of Sections 4(1), 5, 5A, 6, 7 and 8 of the 1894 Act shall be deemed to have been complied with.

19. Proviso thereto states that the date of notice under Section 9(3A) shall be the date of reference for the purpose of determining the value of such land under the 1894 Act.

20. Second proviso states that when the Collector has made an award under Section 11 in respect of any such land, shall land, shall upon such award, vest absolutely in the Government free from all encumbrances.

21. In the case on hand, possession of the land was taken under Section 3 of the 1948 Act. Such possession was taken on requisition. In the absence of any notice being published under Section 4(1a) of the 1948 Act, the question of vesting of the land as contemplated under Section 4(2) of the said Act does not arise.

22. 1948 Act, however, stood expired due to efflux of time after 31.03.1997. With the expiry of the 1948 Act, the requisition also ended and the State was obliged to restore possession of such lands to the land owner/petitioner. The W.B. Amendment Act, however, empowers the State to continue with possession of such lands by resorting to Section 9(3A) of the 1894 Act.

23. The effect of the Land Acquisition (West Bengal Amendment) Act, 1997 fell for consideration in **Sabitri Devi vs. State of W.B.** reported at **(2002) 3 CHN 108** wherein it was held that revalidation has the effect of reviving the requisition for acquisition. In paragraph 41 of the said report it has been held that -

"41. The revalidation has the effect of reviving the requisition for acquisition. As such it is only on the issue of notices under subsection (3A) or (3B) of section 9 of 1894 Act, the revalidation takes, effect. The requisition having ended on the effacement of the statute the property is to be restored to the owner. It could also be treated to have been ended for acquisition where notices under section 4(1a) of 1948 Act stood lapsed before 31st March, 1997. By reason of 1997 Amendment in West Bengal of 1894 Act a fiction is created. By reason of such fiction the requisition would stand converted into acquisition with the issue of notice under section 9(3A) of the 1894 Act, as amended in 1997 in West Bengal. As soon section 9(3A) is resorted to, the possession, if continued after requisition and not restored, shall be deemed to be a possession revalidated under the Land Acquisition Act which then would be a possession for acquisition on the issue of the notification/notice under section 9(3A)....."

24. In case the State resorts to Section 9(3A), the possession of lands taken on requisition and not yet restored to the land owners shall be deemed to be a possession revalidated under the 1894 Act. Such possession would then be a possession for acquisition upon issuance of notice under Section 9(3A) of the 1894 Act.

25. It is evident from the Memo dated 10.08.2011 issued by the Collector, Murshidabad to the Principal Secretary to the Government of West Bengal, Land and Land Reforms Department which has been annexed to the affidavit-in-opposition of the State that notice under Section 9(3A) has not been served to the concerned parties as the fund was not available. The affidavit was affirmed sometimes in the month of September, 2022.

26. Section 9(3A) of the 1894 Act casts an obligation upon the State to serve notice on all such persons known or believed to be interested in any land or to be entitled to act for the persons so interested in a case where possession of the land was taken under Section 3 of the 1948 Act to revive the requisition for acquisition.

27. In view of the admitted fact that notice under Section 9(3A) has not been served upon the concerned person, this Court is of the considered view that the proceedings initiated under 1948 Act stood lapsed with the effacement of the said statute. This Court accordingly holds that the authorities of the State are

possessing the lands in question illegally and forcibly without any authority of law.

28. *In the case on hand, possession of the land was taken over in exercise of the power of requisition under a temporary statute. Such statute was valid till 31.3.1997. Such land has been utilised for a permanent purpose without taking any steps to acquire the same. The power to acquire lands falls within the purview of eminent domain of the State. Article 300A of the Constitution of India states that no person can be deprived of his property save by authority of law. The land acquisition laws provide a complete mechanism for deprivation of property of a person in accordance with law. Such laws provide for payment of fair compensation to the land losers. Alleged payment of 80% of the estimated land value, by no stretch of imagination, can be construed to be a fair compensation in accordance with the relevant statute that provides for acquisition of land. Therefore, utilisation of property without payment of fair compensation to the land owner(s) is in violation of Article 300A of the Constitution of India. Such act amounts to colourable exercise of power by the State and the State is duty bound to pay compensation in accordance with law. Since the land owner is deprived of his property, State is obliged to pay fair compensation to such land owner in accordance with law.*

29. *It is not in dispute that the property in question has been utilised for the purpose of construction of road. State is also not in a position to restore the land to the land owners. The proceedings under the 1948 Act has already been held to have lapsed. The 1894 Act has since been replaced and the 2013 Act has come into force with effect from 01.01.2014.*

30. *In **Aziman Bibi** (supra), the Hon'ble Supreme Court after noting that the land owned by the writ petitioners has been utilised pursuant to the initial declaration and also noticing that the acquisition proceeding stood lapsed, directed the State to take steps for notifying the acquisition once again and determine compensation in accordance with law.*

31. *In **Ganesh Samanta** (supra), the notice under Section 4(1a) stood lapsed. The Hon'ble Division Bench after noticing the Special Bench decision of this Court in **State of West Bengal vs. Sabita Mondal** reported at (2011) 3 CHN (Cal) 555 held that the State Government could have completed the acquisition proceeding by*

applying the provision of Section 9(3A) of the Land Acquisition Act. However, in view of the subsequent development in Land Acquisition laws with the enactment of the 2013 Act, and particularly in view of Section 24(1)(a) of the said Act, the Hon'ble Division Bench directed the State to complete the acquisition proceeding by following therelevant provisions of the 2013 Act.

*32. As the State has utilised the lands in question and is not in a position to restore possession of the lands to the petitioner/ land owner and also that the proceeding under the 1948 Act stood lapsed, the proposition laid down in **Aziman Bibi** (supra), and **Ganesh Samanta** (supra) shall squarely apply to the case on hand. This Court, therefore, holds that the State respondents should be directed to initiate a proceeding for acquisition afresh in accordance with the 2013 Act and to complete the same within a stipulated time.”*

22. In the case on hand also the land has been utilised and the State is not in a position to restore possession of the land to the petitioners/land owners. The proceeding for acquisition initiated under the 1948 Act also stood lapsed by passage of time.
23. This Court, therefore, holds that the State/respondent should be directed to initiate a proceeding for acquisition afresh in accordance with the 2013 Act and to complete the same within a stipulated time.
24. For all the reasons as aforesaid, the writ petition stands allowed.
25. The respondents including the Collector, South 24-Parganas, being the respondent No.2 are directed to take steps for initiating a proceeding afresh in terms of the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and to

complete the same including the compensation as expeditiously as possible but positively within a period of six (6) months from the date of receipt of a server copy of this order.

26. It will be open to the respondent No.2 to issue necessary directions to the Requiring Body in this regard.
27. There will be no order as to costs.
28. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Hiranmay Bhattacharyya, J.)

*Item No.16
Court No.-19
Aritra*