

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Supratim Bhattacharya**

M.A.T. No. 187 of 2018

**Mariam Ahmed and Another
(Sk. Nasiruddin Ahmed, since deceased)
Vs.
The State of West Bengal and Others**

With

**M.A.T. No. 1540 of 2018
CAN 2 of 2019 (Old CAN 615 of 2019)**

**The State of West Bengal and Others
Vs
Mariam Ahmed and Others
(Sk. Nasiruddin Ahmed, since deceased)**

For the appellants
in MAT No.187 of 2018
and for the
respondent nos. 1 and 2
in MAT No. 1540 of 2018

: Mr. Rajit Kumar Jaiswal,
Md. Ali Jinnah,
Mr. Ram Krishna Chandra,
Mr. Nandalal Pradhan,
Md. Mozammel Hossain,
Mr. Debrata Mandal,
Mr. Subham Rakshit,
Mr. P.S Chakraborty

For the State- respondents
in MAT No.187 of 2018 and
For the State-appellants
in MAT No. 1540 of 2018

: Mr. Susovan Sengupta, Sr. Govt. Adv.,
Mr. Subir Pal

For the BSNL : Mr. Rajib Mukherjee,
Ms. Shreyasi Bhaduri,
Mr. Sourish Mukherjee

Heard on : 08.01.2026 & 15.01.2026

Reserved on : 15.01.2026

Judgment on : 02.02.2026

Sabyasachi Bhattacharyya, J.:-

1. The present appeals have been preferred respectively by the State and the land losers in an acquisition proceeding under the West Bengal (Requisition and Acquisition) Act, 1948 (for short, “Act-II of 1948”), against the self-same judgment passed on the land losers’ writ petition, being aggrieved by different portions of the said judgment.
2. The short backdrop of the case is as follows;
3. The subject-plot was requisitioned vide LA Case No.15 (Act-II) of 1987-88 by the State of West Bengal for construction of a Telephone Exchange and Tower by the Calcutta Telephones. The concerned order of requisition was passed on April 6, 1988 and possession was taken subsequently in the month of April, 1988 itself, except a 90 Sq.ft.structure.
4. Subsequently a notice of acquisition of the said plot under Section 4(1a) of Act-II of 1948, dated July 30, 1993, was published on September 27, 1993.
5. Initially a writ petition bearing WP No. 4122 of 1988 was filed against the same by the land losers, which was dismissed since an erroneous plot number was mentioned.

6. A subsequent writ petition bearing WP No. 10985(W) of 1999, also filed by the land losers, was disposed of on June 30, 1999 with a direction on the respondent-authorities to consider the representation of the petitioner with regard to the restoration of possession of the land on the ground that the same stood de-requisition upon no award being passed within the time stipulated in Section 7A of Act-II of 1948 and with the expiry of the statute on March 31, 1997.
7. The Land Acquisition Collector (LA Collector), Howrah, vide order no. 6 dated September 6, 1999, directed compensation for requisition to be paid to the land loser at the rate of 6% on the market value of the plot from the date of dispossession till restoration. The requiring body was directed either to submit a fresh proposal of acquisition or initiate proposal for de-requisition by giving back possession of the plot to the land loser.
8. Subsequently on April 18, 2001 the respondent-authorities issued a notice in the appropriate proforma under Section 9 (3B) of the Land Acquisition Act, 1894, as amended in 1999 (hereinafter referred to as "the LA Act"). The land loser filed a writ petition bearing WP No. 7845(W) of 2001 challenging such *de novo* notice and seeking restoration of the plot of land to the land loser. The said writ petition was allowed on January 9, 2018 by a learned Single Judge of this Court, directing the respondent-authorities to take steps under Section 26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter

referred to as “the 2013 Act”) in respect of the subject-plot no. 690 and to award compensation under Section 25 of the 2013 Act.

9. Challenging the same, the land loser has preferred the present appeal, contending that the writ court ought to have issued a mandate for restoration and/or release of the subject-land to the writ petitioners/land losers with de-requisition compensation.
10. On the other hand, learned Senior Government Advocate appearing for the State assails the impugned judgment on the ground that the learned Single Judge erred in law in directing the State to take necessary steps for calculation of compensation under the provisions of the 2013 Act, since the proceeding was initiated under Act-II of 1948, and not under the LA Act.
11. Learned counsel appearing for the land losers argues that in view of Act-II of 1948 having expired on March 31, 1997 by operation of law, the notice of acquisition and vesting under the Act-II of 1948 automatically lapsed and the respondent-authorities are legally bound to de-requisition the subject-property and restore possession of the same in favour of the appellants.
12. It is submitted that in terms of the order of the LA Collector dated September 6, 1999 and the subsequent direction of a writ court to implement the same, the only recourse open to the respondent-authorities was to restore the property to the appellant.
13. It is argued that, in any event, the Section 4(1a) notice published on September 27, 1993 lapsed on September 26, 1996 after the expiry of

three years from the date of such notice, since no award was passed till then, by operation of Section 7A of Act-II of 1948.

- 14.** Learned counsel for the land losers further contends that the State sat tight over the matter without issuing any notice under Section 9(3B) for a prolonged period and only issued such notice on April 18, 2001, that too without any opportunity being given to the appellant to appear. Such notice was itself without any reason explaining the delay and was tainted by bias.
- 15.** Learned counsel submits that possession was not handed over to the requiring body, the Calcutta Telephones (now BSNL) at least till July 17, 2001, as appearing in the affidavit-in-opposition filed by the said requiring body. It is argued that in all cases where a temporary statute expires, it expires on its own force and is not obliterated by a subsequent legislation. Thus, there is no provision for revival of a lapsed notice by virtue of subsequent amendment to the LA Act.
- 16.** In view of the notice under Section 4(1a) of Act-II of 1948 having itself expired by lapse of the statute, as well as in the absence of any award being passed within the time stipulated under Section 7A of the said Act, the vesting consequent to such notice automatically goes and cannot be revived.
- 17.** It is contended that in cases where the notice lapses under Section 7A of Act-II of 1948, Section 9(3B) of the LA Act would not apply.
- 18.** Thus, it is contended by the appellant that the land ought to be restored to the land losers.

19. Learned counsel for the land losers cites a co-ordinate Bench judgment of this Court in the matter of *Smt. Mandodori Bhakat v. The State of West Bengal* reported at *AIR 2013 Cal 1* for the proposition that there is no question of validating any proceeding which lapsed under Section 7A of Act-II of 1948, and by nostretch of imagination the 2011 Act, having its retrospective commencement from April 1, 1997, can be said to have revived and validated an acquisition which had lapsed on or before March 31, 1995 by operation of Section 7A of Act-II of 1948.
20. Learned Senior Government Advocate, appearing for the State, argues that once vested, a land cannot be divested. With the vesting of the subject-land upon publication of notice under Section 4(1a) of Act-II of 1948, the landbelonged to the State. It is argued that there is no provision in law permitting the divesting of such vested rights.
21. It is next contended that although the initial notice of acquisition under Section 4(1a) might have lapsed by operation of Section 7A of Act-II of 1948, the vesting was revived by operation of Section 9(3A) and Section 9(3B) of the LA Act.
22. In such context, learned Senior Government Advocate argues that alarger Bench consisting of three Judges of this Court held in *State of West Bengal Vs Sabita Mondal* reported at *AIR2012(CAL) 47*, that if a notice under Section 4(1a), issued prior to March 31, 1992 and in respect of which no award had been passed on March 31, 1995, had lapsed, by the Amendment Act of 1997 to the LA Act by the West Bengal Legislature, no provision has been made for revival of the notices which already stood lapsed on March 31, 1997 for non-

compliance of the provision of the Amendment Act of 1996. By the Amendment Act of 1997 to the LA Act, only those notices under Section 4(1a) which would have lapsed on the midnight of March 31, 1997 or on subsequent dates have been saved. In such a situation, the State was directed to give a fresh notice under Section 9(3A) of the LA Act and proceed accordingly.

- 23.** The said judgment was affirmed by the Hon'ble Supreme Court with a bunch of other similar cases vide order dated November 30, 2017. The Hon'ble Supreme Court passed certain directions regarding the payment of interim compensation as well; while doing so, deeming the limitation for preferring a reference under Section 18 of the LA Act to commence from the date of supplementary award which may be made in terms of the order of the Hon'ble Supreme Court. It is, however, submitted that the said judgment of the larger Bench ought to be treated as *per incuriam*, being contrary to previous judgments of this Court and the Hon'ble Apex Court.
- 24.** Learned Senior Government Advocate argues that a vesting under the Act-II of 1948, pursuant to a notice published under Section 4(1a) of the said Act, is *parimateria* with vesting under Section 17 of the LA Act, in both of which cases, upon emergency vesting of the land, the rights in the land vests with the State and cannot subsequently be divested even if the acquisition proceeding is lapsed, which shall then continue only for the purpose of calculation and grant of compensation.
- 25.** Learned Senior Government Advocate places reliance on the judgement of *Indore Development Authority v. Manoharlal and Others*, reported at

(2020) 8 SCC 129 and argues that the learned Single Judge in the instant case erred in law in directing grant of compensation to be paid under the 2013 Act. In paragraph no. 149 of *Indore Development (supra)*¹, the Hon'ble Supreme Court held that Section 24 of the 2013 Act does not intend to takeaway vested rights, since there is no specific provision taking away or divesting title to the land which had originally vested with the State, or divesting title or interest of beneficiaries, or third-party transferees of such land which they had lawfully acquired through sales or transfers. It was further held that there was neither a specific provision made for divesting, nor does the 2013 Act, by necessary intendment, implies such a drastic consequence.

- 26.** Learned Senior Government Advocate next relies on an unreported judgment of a co-ordinate Bench of this Court in *MAT 86 of 2016 (State of West Bengal and Ors vs. Niladri Chatterjee and Ors)*, where it was held that the 2013 Act is not applicable to acquisitions under Act-II of 1948, since the acquisition was not under the LA Act, and the 2013 Act applies only to acquisitions under the LA Act.
- 27.** The State relies on an unreported judgment of the Supreme Court in the matter of *Adani Power Ltd and Anr v. Union of India and Ors. (2026 INSC 1)* to reiterate its contention that once a co-ordinate Bench of a High Court has settled a question of law, a subsequent Bench of equal strength is bound to follow that view when confronted with the same issue. If the later Bench believes that the earlier judgment is so

¹*Indore Development Authority v. Manoharlal and Others reported at (2020) 8 SCC 129*

manifestly erroneous or inapplicable that it ought not to be followed, the later Bench must refer the matter to a larger Bench for consideration. It was further held in the said report that the discipline of precedent is not a matter of personal predilection but is an institutional necessity. *Stare decisis et non quieta movere*, which means to stand by what is decided and not to disturb what is settled, was held to be a working rule which secures stability, predictability and respect for judicial outcomes. The law, it was observed by the Hon'ble Supreme Court, cannot change with the change of the Bench. By placing reliance on the said report, it is argued that the three-Judge Bench decision of this Court in *Sabita Mondal (supra)*² cannot be considered to be a binding precedent.

- 28.** Learned Senior Government Advocate relies on another unreported co-ordinate Judgment of this Court in *MAT 1545 of 2018 (State of West Bengal and Ors. v. Sri Saktipada Saha Chowdhury and Ors.)* to reiterate the proposition laid down in *Niladri Chatterjee*³ (*supra*). Thus, it is argued that the learned Single Judge, in the instant case, could not have gone contrary to the proposition laid down in the said judgments and held that the compensation was payable in the instant case under the 2013 Act.
- 29.** Learned Senior Government Advocate also places reliance on a five-Judge Constitution Bench decision of the Hon'ble Supreme Court in the matter of *State of Orissa v. Bhupendra Kumar* reported at AIR 1962 SC

² *State of West Bengal Vs Sabita Mondal* reported at AIR 2012 (CAL) 47

³ *MAT 86 of 2016 (State of West Bengal vs. Niladri Chatterjee and Ors)*

945. It was held therein that in considering the effect of the expiration of a temporary statute, it would be unsafe to lay down any inflexible rule. If the right created by the statute is of an enduring character and has vested in a person, that right cannot be taken away because the statute by which it was created has expired. It is, thus, contended by the State that since the rights in the subject-plot vested in the State upon issuance of notice under Section 4(1a) of the Act-II of 1948, the said right cannot be taken away merely by expiration of the temporary statute.

30. The State next cites *Haryana State Industrial and Infrastructure Development Corporation Limited and Others v. Deepak Aggarwal and Others*, reported at (2023) 6 SCC 512, where it was held that in case of non-passing of an award in terms of Section 11 of the LA Act where the acquisition proceedings had been initiated prior to January 1, 2014, that is, the date of coming into force of the 2013 Act, all provisions of the 2013 Act relating to the determination of compensation alone would apply to such acquisition proceeding. The inevitable conclusion, it was held, can only be that what is applicable to the various procedures to be undertaken during the period up to the stage of determination of compensation are those prescribed under the LA Act.
31. Drawing analogy from the above report, learned Senior Government Advocate contends that the vesting of the subject-land under Act-II of 1948 cannot be reopened subsequently by operation of the 2013 Act.
32. Learned Senior Government Advocate next cites an unreported judgment of a co-ordinate Bench Judgment of this Court in *MAT 1243*

of 2025 (Sukumar Sarkar and Ors. v. The State of West Bengal and Ors.).

It was observed in paragraph no. 47 thereof that in a requisition under Act-II of 1948, the requisitioned land vests absolutely in the State Government simultaneously with the publication of a notice on acquisition in the Official Gazette under Section 4(1a) of the said Act, by operation of sub-section (2) of Section 4 of the same. Even if the subsequent timeline for passing the award lapses, it was observed that an already vested land cannot be divested and reverted back to the original *raiyat*.

33. Learned counsel for the requiring body (BSNL) argues that despite the amount of compensation having been paid to the State by the requiring body long back and repeated reminders, the State sat tight over the matter and handed over possession to the requiring body much subsequently. However, it is submitted, the property has ultimately been handed over to the requiring body, upon which the same has been put to proper use by the said body in furtherance of the purpose for which the same was acquired.
34. Upon considering the arguments of the parties, this Court finds that the primary questions which arise for consideration are, ***whether the vesting by virtue of publication of the notice under Section 4(1a) of Act-II of 1948 was nullified either by the passage of the statutory period for passing an award under Section 7A of the said Act or by the operation of the statute coming to an end on and from April 1, 1997, and whether consequentially the land ought to be restored to the land losers.***

35. *A further question which arises is, if compensation is to be awarded to the appellants at all, whether the same should be under the LA Act or the 2013 Act.*

36. While considering the above questions, the different modes of acquisition under the LA Act and Act-II of 1948 respectively, and the incidents of the same, are to be looked into.

37. The LA Act contemplates two modes of acquisition.

38. The first mode is the regular mode of acquisition, initiated by a notice under Section 4 of the said Act, followed by a declaration under Section 6 thereof, which ultimately culminates in an award under Section 11 of the said Act being passed. The subject-plot ultimately vests in the State upon possession being taken in terms of Section 16 of the said Act. However, Section 11A, introduced by subsequent amendment, provides that if an award is not passed within two years from the date of the publication of the declaration under Section 6 of the LA Act, the entire proceeding for the acquisition of the land shall lapse. In the regular mode, thus, it is the entire acquisition proceeding which lapses if no award is passed within the time contemplated in Section 11A and, since there arises no question of possession being taken before the award, the proceeding lapses as a whole and the land loser is entitled to retain the property.

39. The second mode of acquisition under the LA Act is the emergency mode. Under Section 17 of the LA Act, in cases of urgency, whenever the appropriate Government so directs, the Collector, though no award has been made, may, on the expiration of the 15 days of the publication

of the notice mentioned in Section 9(1), take possession of any land needed for a public purpose, upon which such land shall vest absolutely in the State Government free from all encumbrances.

- 40.** However, sub-section (3A) introduced by the Amendment Act of 1984 with effect from September 24, 1984, stipulates that before taking possession of any land under sub-section (1) or sub-section (2) of Section 17, the Collector shall, without prejudice to the provision of sub-section (3), tender payment of 80% of the compensation of such land as estimated by him to the persons interested and entitled thereto and pay it to them, unless prevented by one or more of the contingencies mentioned in Section 31(2) of the Act.
- 41.** In such a scenario, after publication of notice under Section 4 and declaration under Section 6, and subsequent issuance of notice under Section 9, possession has to be taken by the State on the expiration of 15 days from such notice under Section 9(1). In such case, the land vests completely in the State free from all encumbrances, subject to prior payment of 80% of estimated compensation to the land loser. It has been held judicially that both the components, possession and compensation, are essential prerequisites of such vesting.
- 42.** In the second (emergency) mode of acquisition under the LA Act, even if no award is passed within the period of two years as stipulated under Section 11A(1), the vesting which has already occurred under Section 17 is not nullified, since there is no provision in the Act to divest land which is already vested in the State. In several judgments, such as *Bangalore Development Authority and Another v. State of Karnataka and*

Others, reported at (2022) 14 SCC 173, referred to by the State, the acquisition proceeding is deemed to continue for the limited purpose of calculation and payment of compensation to the land loser.

- 43.** Coming to Act-II of 1948, however, only a single mode of acquisition has been contemplated. The said Act is not confined to acquisition but takes within its fold prior requisition and, if necessary, subsequent acquisition of the required land. Thus, as opposed to either of the modes of acquisition contemplated in the LA Act, the possession of the subject-plot is taken upon requisition by making an order under Section 3(1) of Act-II of 1948.
- 44.** Under the said Act, acquisition may follow possession by requisition, upon a notice being published in the Official Gazette under Section 4(1a) of Act-II of 1948. Sub-section (2) of Section 4 of the said Act specifically provides that upon such publication of notice of acquisition, the requisitioned land shall, on and from the beginning of the day of publication, vest absolutely in the State Government free from all incumbrances and the period of requisition of such land shall end. Thus, the effect of Section 4(2) of Act-II of 1948 is that upon publication of notice under sub-section 1(a) of the Section 4 the requisitioned land, possession of which already lies with the State, vests completely, free from all encumbrances, in the State. Thus, the transfer of ownership is complete on the date of and simultaneously with publication of a notice of acquisition under Section 4(1a). Section 7 of the said Act speaks about payment of compensation to the land loser by applying the yardsticks of Section 23 of the LA Act.

- 45.** However, as per Section 7A of Act-II of 1948, the Collector shall make an award under Section 7(2) of the said Act within the period of three years from the date of publication of notice under Section 4(1a). Importantly, if such award is not made within the period as aforesaid, the said notice shall lapse.
- 46.** On a conjoint reading of the modes of acquisition under the LA Act and Act-II of 1948, it is evident that whereas the former provides for emergency as well as regular acquisition, under the latter Act, the only mode of acquisition is immediate. Although the effect of emergency acquisition under Section 17 of the LA Act and that under Section 4(1a) of the Act-II of 1948 is the same, being that the property vests without encumbrances in the State as and when possession is taken (of course, subject to the compliance of the prerequisites thereof), there is a marked difference in respect of lapse upon no award being passed during the statutory period under the said Acts.
- 47.** Whereas, in terms of Section 11A(1) of the LA Act, it is the entire acquisition proceedings which lapse, under Section 7A(1) of Act-II of 1948, it is the notice which lapses.
- 48.** Significantly, Section 7A does not speak about vesting itself lapsing but only about the notice being lapsed after the statutory period of three years from the date of publication of the notice under Section 4(1a), if no award is passed within that period. Yet, the necessary implication of lapse of the notice is that the vesting also goes, since the very premise of the vesting, under sub-section (2) of Section 4 of Act-II of 1948, is publication of notice in the Official Gazette. Thus, the vesting under

Act-II of 1948 is inextricably linked with the notice under Section 4 (1a) thereof and the former cannot survive without the latter.

- 49.** The State argues in the present case that even if the notice lapses, once vested, the property cannot be divested under any of the provisions of the Act. However, we are unable to agree with such contention. On a purposive interpretation of Section 4, read with Section 7A, of Act-II of 1948, it is seen that the notice published under Section 4(1a) itself lapses by operation of Section 7A(1) if no award is passed within three years from the date of the same. Sub-section(2) of Section 4, which provides for vesting, is entirely premised on publication of such notice. The language of sub-section (2) is, “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, vests absolutely in the State Government free from all encumbrances and the period of requisition of such land shall also end.”
- 50.** The necessary implication would be that only if there is a valid and subsisting notice in the eye of law as published in the Official Gazette, the vesting survives. However, what happens if no award is passed within three years therefrom is that under Section 7A, the notice itself, which is the very basis of the vesting, lapses. The effect of such “lapse” would evidently be that the notice is entirely nullified, and has to be treated essentially as a nullity retrospectively, from the date of its publication. Although the lapsing happens *post facto*, the effect of lapse of the notice is nullifying the notice itself as it stood from the date of its publication. It would be absurd to hold that in the same breath, a

notice has lapsed but the vesting, which is solely premised on such notice, continues. Thus, in order to attribute reasonable meaning to Sections 4(2) and 7A(1) of Act-II of 1948, sub-section (2) of Section 4 has to be read down to mean that if there is a *valid* notice, only then the property would be deemed to continue to be vested in the State Government.

51. Such view finds support in the co-ordinate Bench decision in *Smt. Mandodori Bhakat (supra)*⁴, where it was observed, *inter alia*, that there is no question of validating any lapsed proceeding under Section 7A of Act-II of 1948 and by no stretch of imagination can the 2011 Act, having its retrospective commencement from April 1, 1997, be said to have revived and validated an acquisition which has lapsed on or before March 31 of 1995 by operation of Section 7A of Act-II of 1948. However, with all humility, we would have to read down the said proposition to an extent in consonance with our above finding, holding that it is not the acquisition process which lapses but the notice under Section 4(1a) and, consequentially, the vesting which lapses upon expiry of three years from the date of the notice as contemplated in Section 7A of Act-II, of 1948.

52. Hence, once the notice lapses, the vesting is automatically nullified retrospectively.

53. The State argues that, once vested, the property cannot be divested within the contemplation of the statute. However, it is not a question of subsequent 'divesting', which would require another positive act, but

⁴ *Smt. Mandodori Bhakat v. The State of West Bengal* reported at AIR 2013 Cal 1

merely that the vesting consequent to the notice itself is nullified and obliterated by virtue of lapsing of the notice.

- 54.** The effect, then, would be that upon the lapse of a notice and the consequential vesting under Section 7A of the Act-II of 1948, the subject-property would revert back to its previous status as a land requisitioned under Section 3 of the said Act, without any acquisition process being initiated at all. If Act-II of 1948 did not spend its life but were to survive, the appropriate procedure then available to the State would be to publish a fresh notice under Section 4(1a) and thereafter proceed to assess and pay compensation to the land loser, if the State was still willing to go ahead with the acquisition process.
- 55.** However, a conundrum arises here. By operation of Section 1 of Act-II of 1948, the life of which has been extended from time to time, the said Act itself spent its life on March 31, 1997.
- 56.** To take care of such conundrum, sub-sections (3A) and (3B) were introduced after sub-section (3) in Section 9 of the LA Act by virtue of the West Bengal Amendment Act of 1997 to the said Act, operative with effect from May 2, 1997. By dint of the legal fiction introduced by such amendment, two situations were envisaged – one, where the land had been requisitioned simpliciter under Section 3 of Act-II of 1948 without any acquisition process being initiated, and the other, where post-requisition, a notice of acquisition had already been published under sub-section (1a) of Section 4 of Act-II of 1948. Whereas sub-section (3A) takes care of the first such situation, sub-section (3B) deals with the second.

- 57.** Sub-section (3B) applies only in cases where a notice of acquisition of has been duly published under Section 4(1a) of Act-II of 1948, in which case, apart from the provisions of Sections 4, 5, 5A, 6, 7, 8 and 16 of the LA Act being deemed to be complied with, the date of reference for the purpose of determining the value of the land for assessment of compensation would be the date of publication of the notice under Section 4(1a) of Act-II of 1948.
- 58.** However, a question would arise as to what would be the position of law if the notice under Section 4(1a) itself lapses by operation of Section 7A of the Act-II of 1948. Sub-section (3B) of Section 9 of the LA Act, by obvious implication, only takes care of situations where there was a valid and subsisting notice under Section 4(1a) on the date when Act-II of 1948 spent its life, in which case, by deeming fiction, despite the expiry of Act-II of 1948 on and from April 1, 1997, the proceeding would be deemed to continue for the purpose of assessment of compensation and payment of the same to the land loser under Section 9 (3B) of the LA Act.
- 59.** However, if on the date when Act-II of 1948 came to an end, that is March 31, 1997, the notice under Section 4(1a) under the said Act had itself lapsed by operation of Section 7A thereof and the consequential vesting had been nullified, there would be no scope of applying Section 9(3B) of the LA Act, as there would be no subsisting notice in the eye of law under Section 4(1a) when Section 9(3B) came into force on May 2, 1997.

- 60.** By default, therefore, in such a case, as the status of the land which had been acquired under Section 4(1a) of Act-II of 1948 reverts back to that of a merely requisitioned land under Section 3 of the said Act in the absence of a valid notice or vesting under Section 4(1a), sub-section (3A) of Section 9 of the LA Act would apply.
- 61.** This proposition finds strength in the larger Bench judgment of three Judges of this Court in *Sabita Mondal (supra)*⁵. The larger Bench held that 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 LA Act by the West Bengal Legislature, no provision has been made for revival of the lapsed notices which already stood lapsed on March 31, 1997 for non-compliance of the provision of the Amendment Act of 1996 to the 1948 Act. It was further observed that 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. In such a situation, the larger Bench granted liberty to the State to give a fresh notice under Section 9(3A) of the LA Act and to proceed accordingly. Apart from the said proposition having found sanction in view of affirmance by the Hon'ble Supreme Court, we completely agree with the logic of the said judgment in view of our above discussion as well.

⁵ *State of West Bengal Vs Sabita Mondal* reported at **AIR 2012 (CAL) 47**

- 62.** The State has relied on *Indore Development (supra)*⁶ to argue that a vested right cannot be divested. However, a judgment is a proposition for what is held therein, in the particular facts of the case, and not whatever secondary derivation could be deduced from the same. The adjudication in *Indore Development (supra)*⁶ was in the context of applicability of the 2013 Act in an acquisition proceeding under the LA Act. In the said context, it was held that Section 24 of the 2013 Act does not intend to takeaway vested rights because there is no specific provision for doing so. In such light, it was observed that Section 24(2) has retroactive operation with respect to the acquisitions initiated under the 1894 Act and which are not completed by taking possession, nor compensation has been paid, in spite of lapse of five years and proceedings are kept pending due to lethargy of the officials. It was held that drastic consequences followed as per the provisions contained in Section 24(2) in such cases.
- 63.** As opposed to the said case, in the instant *lis*, with the expiry of three years after the publication of notices under Section 4(1a) of the 1948 Act, the notice, and consequentially, the vesting itself, stood lapsed. Thus, the ratio laid down in *Indore Development (supra)*⁶, where the Hon'ble Supreme Court was dealing with vested rights, cannot be applied by way of analogy to the present case, since there was no vested right left in the instant case with the expiry of three years after

⁶*Indore Development Authority v. Manoharlal and Others* reported at (2020) 8 SCC 129

the publication of the said notice of acquisition; thus, no question arose as to divesting the same.

- 64.** The ratio of *Adani Power Ltd (supra)*⁷ cannot be applied in the above context. However, the proposition of *stare decisis* is definitely applicable in cases where a co-ordinate Bench or a larger-strength Bench of the same High Court has settled a question of law. Going by such dictum of law, the ratio laid down by two co-ordinate Benches respectively in *Niladri Chatterjee (supra)*⁸ and *Sri Saktipada Saha Chowdhury (supra)*⁹ are binding on this Bench. In both the said cases, it was held that acquisitions of land initiated under the Act-II of 1948, and not under the LA Act, do not attract the provisions of Sections 24 and 26 of the 2013 Act.
- 65.** In order to properly appreciate such proposition, Section 24 of the 2013 Act is set forth hereinbelow:

“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 sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical

⁷ *Adani Power Ltd and Anr v. Union of India and Ors. (2026 INSC 1)*

⁸ *MAT 86 of 2016 (State of West Bengal vs. Niladri Chatterjee and Ors)*

⁹ *MAT 1545 of 2018 (State of West Bengal and Ors. v. Sri Saktipada Saha Chowdhury and Ors.)*

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.”

- 66.** Sub-section(1) of Section 24 contemplates two situations, dealt with respectively by Clauses (a) and (b) thereof. In the first, where no award under Section 11 of LA Act has been made, all the provisions of the 2013 Act relating to determination of compensation are to be applied, and in the second, where an award has actually been made, the proceedings shall be deemed to continue under the provisions of the LA Act itself and the provision of compensation under the 2013 Act would not be applicable.
- 67.** However, we cannot lose sight of the very first pre-requisite, as per the language of sub-section (1) of Section 24 of the 2013 Act itself, necessary for attracting the said provision at all. The said sub-section provides that it applies only “in any case of land acquisition proceedings *initiated under the Land Acquisition Act, 1894*”.
- 68.** Hence, with due respect, both the co-ordinate Benches were correct in observing that for the provisions of Section 24 of the 2013 Act to apply in the first place, the acquisition has to be initiated under the LA Act. Although Section 7 of Act-II of 1948 incorporates the parameters enumerated in Section 23 of the LA Act for the purpose of

assessment of compensation, the LA Act itself has not been imbibed or referred to in Section 7 of Act-II of 1948. Rather, only the relevant provisions of the LA Act for assessment of compensation were incorporated by Section 7. Thus, in case the acquisition is initiated under Section 4(1a) of Act-II of 1948, by virtue of Section 24(1) of the 2013 Act, the latter Act does not come into play at all.

- 69.** Hence, the learned Single Judge in the present case erred in law in directing the provisions of the 2013 Act to be applied for the purpose of calculating compensation for the land loser.
- 70.** In *Haryana State Industrial (supra)*¹⁰, cited by the State, the scope of consideration was whether a Section 4 notification issued under the LA Act prior to January 1, 2014 (date of commencement of the 2013 Act) could continue or survive after such commencement and as to whether a Section 6 notification under the LA Act could be issued thereafter. While considering such question, the Hon'ble Supreme Court came to the conclusion that for the purposes of sub-section(1) of Section 24 of the 2013 Act, the proceedings under the LA Act shall be treated as initiated on publication of a notification under sub-section (1) of Section 4 and that when Clause (a) of sub-section (1) of Section 24 of the 2013 is applicable the proceedings shall continue as per the LA Act. However, only for the limited purpose of determination of compensation amount, the provision of the 2013 Act shall be applied. There cannot be any quarrel with such proposition. However, the said judgment is not

¹⁰***Haryana State Industrial and Infrastructure Development Corporation Limited and Others v. Deepak Aggarwal and Others*, reported at (2023) 6 SCC 512,**

apt in the context of the present case, since the proceeding here was initiated not under the LA Act but under Act-II of 1948.

- 71.** Insofar as the co-ordinate Bench judgment in *Sukumar Sarkar (supra)*¹¹ is concerned, the issue which had fallen for consideration was whether, in an acquisition proceeding under Sections 4 and 6 of the LA Act, the State can claim that the disputed plots of land were vested in it by dint of such acquisition. In such context, the court compared the provisions of the LA Act and Act-II of 1948 insofar as vesting is concerned. In the said backdrop, it was observed that in a requisition scenario under the Act-II of 1948, the requisitioned land vests absolutely in the State Government simultaneously with the publication of notice of acquisition in the Official Gazette under Section 4(1a) of the said Act, by operation of sub-section (2) of Section 4 of such Act. In a stray sentence thereafter, it was observed that even if the subsequent timeline for passing the award lapses, an already vested land cannot be divested and reverted back to the original *raiyat*. However, from the subsequent paragraph of the said judgment, it is evident that it was the case of neither party that the acquisition proceeding therein was initiated under Act-II of 1948. Thus, the stray sentence mentioned above was at best an *obiter dictum* and cannot be culled out from the rest of the context of the judgment. The premise of examination by the Division Bench in the said Judgment was a comparative study, insofar as vesting is concerned, in acquisition proceedings respectively under

¹¹ **MAT 1243 of 2025 (Sukumar Sarkar and Ors. v. The State of West Bengal and Ors.)**

the LA Act and Act-II of 1948. Thus, the stray observation mentioned above cannot be a binding precedent in the present context at all.

- 72.** In the *State of Orissa (supra)*¹², a Constitution Bench of the Hon'ble Supreme Court observed that if the right created by the statute of an enduring character and vested in the person, that right cannot be taken away because the statute by which it was created has expired.
- 73.** There cannot be any quarrel with such proposition. However, in the case at hand, we are dealing with a situation where the so-called 'vested' right, premised on a notice under Section 4(1a) of Act-II of 1948, was itself vitiated by the lapse of such notice itself, which took away the very basis of such vesting and nullified the vesting on the lapse of the notice. Hence, no right of enduring character vested in the State was carried over after the expiry of the said Act on March 31, 1997. Even prior to the expiry of the statute, the vesting had been nullified and the status of the subject-property reverted back to that of one which had been merely requisitioned and possession taken, without any acquisition proceeding having been initiated in the eye of law at all. Accordingly, the proposition laid down in *State of Orissa (supra)*, is also not germane in the present context.
- 74.** On the basis of the above discussion, thus, we come to the following conclusions.
- i) The learned Single Judge, in the judgment impugned before us, erred in law in directing the State to assess compensation under the provisions of the 2013 Act, since, in view of the acquisition in

¹²***State of Orissa v. Bhupendra Kumar* reported at AIR 1962 SC 945**

the present case having been initiated under Act-II of 1948 and not under the LA Act, the pre-condition of the acquisition proceeding being initiated under the LA Act, as envisaged in Section 24(1) of the 2013 Act, is not satisfied. As such, the 2013 Act is not attracted to the present case at all, since the acquisition proceeding was initiated under Act-II of 1948 and not under the LA Act.

- ii) On the expiry of three years, as stipulated in Section 7A of Act-II of 1948, after the publication of the acquisition notice under Section 4(1a) of Act-II of 1948 on September 27 of 1993, at a time when Act-II of 1948 was still subsisting, the notice under Section 4(1a) lapsed by operation of Section 7A of the said Act, thereby nullifying the consequential vesting, on a conjoint reading of sub-sections (2) and (1a) of Section 4 with Section 7A of the said Act. Thus, the subject-land reverted back to the Section 3 stage, where it had been requisitioned upon possession being taken but no proceeding for acquisition had been initiated. Under the scheme of Act-II of 1948, there is no provision for investiture of the rights in the land in the State merely upon possession being taken on the basis of an order of requisition under Section 3; such investiture, under the said Act, operates only upon a valid notice under Section 4(1a) being published, subject of course, to such validity continuing till the life of the 1948 Acts spent its force on March 31, 1997. As the validity of the vesting was negated in the present case by lapse of the notice under Section

4(1a) itself, the status of the land, when the West Bengal Amendment of 1997 to the LA Act came into force, was that the land was merely requisitioned, without any acquisition proceeding having been initiated.

- iii) By the deeming legal fiction incorporated in sub-sections(3A) and (3B) of Section 9 of the LA Act by the West Bengal Amendment of 1997, with effect from May 2, 1997, two different situations were contemplated - first, where an acquisition process had been started by publication of notice under Section 4(1a), which would be governed by sub-section (3B) of Section 9 of the LA Act, and secondly, where no such acquisition had commenced and the property had only been requisitioned, in which case Section 9(3A) of LA Act would apply.

75. In view of our observation that there was no valid notice for acquisition of the land under Section 4(1a) when the 1997 West Bengal Amendment came into force and Act-II of 1948 spent its life, in view of lapse of the notice and of the consequential vesting by operation of Section 7A of Act-II of 1948, the provisions of sub-section (3A), as opposed to (3B), of Section 9 of the amended LA Act would apply.

76. Thus, the State, if it was still willing to proceed with the acquisition, had to issue a notice under Section 9(3A) and proceed to compute compensation by taking as the date of reference for determining the market value the date of such notice under sub-section 9(3A) of the amended LA Act.

- 77.** However, in the peculiar facts of the present case, we find that for all practical purposes, a notice had been issued, although erroneously captioned under Section 9(3B) of the LA Act, on April 18, 2001. In the facts of the case, thus, the same has to be read as one under sub-section (3A) of Section 9 of the amended LA Act.
- 78.** As apprised by the requiring body, the possession of the land-in-question has by now already been handed over to therequiring body and the latter has already commenced work on the said property by undertaking the public project for which it was requisitioned. Since a notice was indeed issued under the provisions of the amended Section 9 of the LA Act, as amended by virtue of West Bengal Acts 7 of 1997, although erroneously captioning it to be one under the amended sub-section (3B) instead of (3A), it would be an exercise in futility to set the clock back by directing the State to issue a fresh notice under sub-section (3A), merely because the caption of the notice was erroneous, which is, after all, a technical defect. As even the Court required extensive deliberations to arrive at the exact provision which would be applicable, the State could not be blamed much for being advised to resort to sub-section (3B) instead of sub-section (3A) of Section 9, as amended, in view of the intriguing legal question involved. Thus, if the State is penalized for such wrong mention of caption, although a notice was actually issued under the amended provision of Section 9 under the 1997 Amendment, the same would be a disproportionate penalty on the State and would unnecessarily deplete the Public Exchequer without any reasonable cause. Hence, the appropriate approach, in

our humble opinion, would be to deem the notice dated April 18, 2001 under Section 9(3B) of the LA Act, as amended, to be a notice under Section 9(3A) of the said Act.

- 79.** Before parting with the matter, we take note of the fact that the LA Act has since been repealed by way of operation of Section 114(1) of the 2013 Act. However, since the relevant provisions of Section 23 of the LA Act were incorporated in Section 7 of Act-II of 1948 itself for the limited purpose of providing the yardsticks of determination of compensation, the principles of “legislation by incorporation”, as opposed to “legislation by reference” are applicable. Hence, the subsequent repeal of the LA Act does not have any effect on the applicability of its provisions regarding computation of compensation which were made a part of Act-II of 1948.
- 80.** Accordingly, MAT No.187 of 2018 and MAT No.1540 of 2018 are partially allowed on contest, thereby modifying the impugned judgment to the following effect:
- i) The direction of the learned Single Judge on the State to assess compensation under the provisions of the 2013 Act is hereby set aside and it is hereby held that the compensation shall be determined under the provisions of the LA Act in terms of Section 7 of Act-II of 1948, read with Sections 11 and 23 of the LA Act.
 - ii) For such purpose, the notice issued by the State on April 18, 2001, purportedly under Section 9(3B) of the LA Act, shall be construed as a notice under Section 9(3A) of the said Act, as amended by the West Bengal Amendment of 1997.

- iii) The State shall now proceed to assess compensation payable to the land loser in respect of the subject plot by taking the date of the notice under Section 9(3A) of the LA Act, as indicated above, as the date of reference for the purpose of determining the value of such land under the LA Act and thereafter pass an award in favour of the land loser to that effect as well as pay the awarded amount to the land loser.
- iv) Needless to say, if the land loser is aggrieved by the quantum of compensation so assessed in the light of the observation made hereinabove, it will be open to the land loser to seek a reference under Section 18 of the LA Act before the appropriate forum/court.
- v) The entire process of assessment of compensation and passing of the award shall be concluded by the concerned Collector as expeditiously as possible, preferably within three months from the date of communication of this order to the concerned Collector.
- vi) For the above purpose, the “Collector” shall be the person so designated previously under the LA Act. However, in the event there is no such post of Collector as of today under the LA Act by virtue of repeal of the LA Act by operation of Section 114(1) of the 2013 Act, the person designated as ‘Collector’ under the 2013 Act shall function as the Collector under the LA Act for the limited purpose of complying with the directions of this Court.

81. Interim applications, if any, stand consequentially disposed of.

- 82.** Interim orders, if any, are hereby vacated.
- 83.** There will be no order as to costs.
- 84.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)