

HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction Appellate Side

Present:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 28380 of 2025

Suja Uddin Molla & Ors.

Versus

The State of West Bengal & Ors.

For the petitioners	:	Mr. Amit Kumar Pan Ms. Tanusri Santra
For the State-respondent	:	Mr. Asish Kumar Guha Mr. Jayak Kumar Gupta
Heard on	:	20.03.2026
Judgement on	:	20.03.2026

Hiranmay Bhattacharyya, J.:

1. Petitioners claim to be the recorded owners of RS Plot No. 1393/2019 within Mouza – Benjanharia, JL No. 14, under Budge Budge Police Station, in the district of South 24 Parganas.
2. Petitioners allege that their property was initially requisitioned by initiating a proceeding under Section 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948 ('1948 Act', for short)

followed by issuance of a notice under Section 4(1a) of the 1948 Act. Petitioners state that no award was declared under the 1948 Act during the lifetime of the said Act.

3. Mr. Pan, learned advocate appearing for the petitioners submits that the property of the petitioners has been utilised but no compensation has been paid to the petitioner till date. He submits that since no award was declared within the specified time limit indicated under Section 7A of the 1948 Act, the notice of acquisition stood lapsed. He submits that no further step was taken to convert the acquisition initiated under Section 1948 Act by invoking the provisions laid down under Section 9(3A) or 9(3B) of the Land Acquisition (West Bengal amendment) Act, 1997 ('the 1997 Act', for short). He submits that since in the meantime the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013) has come into force with effect from January 1, 2014, the respondent authority should be directed to initiate a fresh acquisition proceeding under the 2013 Act and to pay compensation in terms of the said Act.

4. Mr. Gupta, learned advocate appearing for the State submits that no land acquisition proceeding was initiated under the Land Acquisition Act, 1894 ('the 1894 Act', for short) or the Land Acquisition (West Bengal amendment) Act, 1997. He, therefore,

submits that the land acquisition proceeding cannot be declared to have lapsed under Section 24 of the 2013 Act as such lapsing would occur only if a proceeding was initiated under Act I of 1894.

5. Heard the learned advocates appearing for the respective parties and perused the materials placed.

6. The following facts are not in dispute:

- a) One land acquisition proceeding being LA case No. LA-II/50(A) of 1967-68 was initiated as per the proposal of the Superintending Engineer, Flood Circle, Irrigation and Waterways Directorate for acquisition of 9.0065 acres of land including of Mouza – Benjanharia and Joychandipur including RS Plot No. 1393/2019 , JL No. 14 within Budge Budge Police Station for Charial Diversion Khal under Charial Basin Drainage Scheme. RS plot nos. 2019 and 1393/2019 are same;
- b) The order of requisition under Section 3(1) of the 1948 Act was passed on December 9, 1968;
- c) Possession of the requisitioned land was taken and delivered to the requiring body on January 16, 1969;
- d) Notification under Section 4(1a) of the 1948 Act was published in the Calcutta Gazette dated May 17, 1974;

7. It has been specifically admitted in the status report that the award could not be declared within March 31, 1997, i.e., the date on which the 1948 Act stood expired due to lack of necessary funds from the Requiring Body.
8. Thus from the stand of the State as reflected in the status report filed by the respondent, it is evident that no award was passed during the lifetime of the 1894 Act and the plot in question has been utilised.
9. The State is also not in a position to restore possession of the said property to the petitioner/land owner.
10. The issue that falls for consideration is whether the petitioners are entitled to compensation as per the provision of the 2013 Act.
11. A more or less identical issue fell for consideration before this Court in the case of *Jamaluddin Momin –Vs.- State of West Bengal & Ors.* (WPA 7380 of 2015). In *Jamaluddin Momin (supra)* it was held thus:

“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 the relevant 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.”

12. The decision in *Jamaluddin Momin* (supra) shall squarely apply to the case on hand. Accordingly, this Court holds that the respondents authorities 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.

13. In view thereof, the writ petition stands allowed.
14. The respondents, including the Collector, South 24 Parganas, being the 2nd respondent, are directed to take steps for initiating a proceeding for acquisition afresh in terms of the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and to complete the same including payment of compensation as expeditiously as possible but positively within a period of six months from the receipt of a server copy of this order.
15. There shall be, however, no order as to costs.
16. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of requisite formalities.

(Hiranmay Bhattacharyya, J.)