

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

Present:

The Hon'ble Justice Debangsu Basak
 And
The Hon'ble Justice Md. Shabbar Rashidi

APOT 277 of 2025
IA NO. GA/1/2025
THE STATE OF WEST BENGAL
VS
SHILADITYA BANERJEE AND ORS.

For the Appellant : Mr. Kishore Dutta, Ld. Advocate General
 Mr. Partha Pratim Roy, Adv.
 Mr. Biswaroop Bhattacharyya, Adv.
 Ms. Nilanjana Adhya, Adv.
 Mr. Paritosh Sinha, Adv.
 Mr. Debayan Sen, Adv.
 Mr. Niket Ojha, Adv.
 Ms. Swagata Ghosh, Adv.

For the Respondent 1 & 3: Mr. S.N. Mookherjee, Sr. Adv.
 Mr. Sabyasachi Sen, Adv.
 Mr. Rajarshi Dutta, Adv.

For the Respondent 2 : Mr. Pranit Bag, Adv.
 Mr. Ramanuj Roy Chowdhuri, Adv.

For the Respondent 6 : Mr. Swapan Nath, Adv.
 Mr. Rachit Lakhmani, Adv.
 Ms. Shreyasi Nath, Adv.

Hearing Concluded on : February 11, 2026
 Judgement on : February 13, 2026

DEBANGSU BASAK, J.:-

1. Appellant has assailed the order dated September 11, 2025 passed in EC 7 of 2025, in this appeal.

2. Learned Advocate General appearing for the appellant has contended that, the state acquired the properties belonging to the respondents invoking the provisions of the West Bengal Land (Requisition and Acquisition) Act, 1948. The Collector has passed an award on February 28, 1997 with regard to such acquisition.

3. Parties had made a reference to the Land Acquisition Court and such reference was disposed of by the judgment and order dated August 17, 2001. The respondents had filed an execution petition before the Alipore Court in 2005 seeking to execute the award dated February 28, 1997. Appellant had preferred an appeal from the judgement and order dated August 17, 2001. In such appeal, appellant had made a deposit before the Registrar General of this Hon'ble Court on September 7, 2017.

4. Learned Advocate General has drawn the attention of the Court to the order passed by the Appeal Court on September 8, 2017 as also subsequent developments with regard to the execution proceedings.

5. Learned Advocate General has submitted that, the respondents filed an execution petition in the High Court. He has contended that, the second execution petition is not maintainable. On the issue of maintainability, he has contended that, not only a second execution petition is not maintainable but also this Court

has no jurisdiction to entertain such execution petition as this Court did not pass the decree dated August 17, 2001.

6. Learned Advocate General has contended that, the respondents cannot overlook the money deposited with the Collector as well as the Registrar General. Such money deposits have to be adjusted from decretal amount.

7. Learned Advocate General has relied upon ***AIR 1976 Calcutta 341(Gopal Krishna Mukherjee and Others Vs. The State of West Bengal and Others)***, ***2003 1 CHN 323(Rama Kanta Das & Ors. Vs. State of West Bengal & Ors)*** and ***2006 Volume 8 SCC 457(Gurpreet Singh Vs. Union of India)***, in support of his contentions.

8. Learned Senior Advocate appearing for the respondent No.1 and 3 has contended that, neither the Land Acquisition Act, 1894 nor the West Bengal Land (Requisition and Acquisition) Act, 1948 provide any mechanism for execution of an award passed thereunder. He has relied upon Section 3(d), 18, 25, 53 and 54 of the Act of 1894 in support of his contentions. He has also relied upon Section 8A of the West Bengal Land (Requisition and Acquisition) Act, 1948.

9. Learned Senior Advocate appearing for the respondents 1 and 3 has relied upon ***2018 3 SCC 622 (Sundaram Finance Limited***

Versus Abdul Samad and Another) and ***2022 14 SCC 417 (Gurpreet Singh Versus Union of India)*** in support of his contentions that the award passed under the Act of 1948 is a deemed decree and cannot be equated with a decree passed under the provisions of the Code of Civil Procedure, 1908.

10. Appellant had initiated acquisition proceedings in respect of Premises No. 96, Narkeldanga Main Road, Kolkata under the provisions of the Act of 1948. The first Land Acquisition Collector had made and published an award dated February 20, 1997. One of the owners of the immovable property concerned, being aggrieved, by the award, had made an application under Section 8(1) of the Act of 1948 requiring the matter to be referred to the Court. Consequently, the Collector had referred the disputes with regard to the award as raised by such owner to the Court, under the provisions of the Act of 1948.

11. The reference under Section 8(1) was registered as LRA Case No. 177 of 1999 by the Special Land Acquisition Judge at Alipore. By a judgment and order dated August 17, 2001, the Learned Judge had modified the award by enhancing the amount of compensation.

12. Being aggrieved by the judgment and order dated August 17, 2001, appellant had preferred an appeal to the High Court. The High Court had passed an order dated September 05, 2017 where, stay of

execution case arising out of LRA Case No. 177 of 1999 was granted on condition of deposit of the amount specified.

13. Appellant in terms with the directions of the High Court had deposited the sum of Rs. 4,11,59,371/- with the Learned Registrar General on September 07, 2017.

14. By an order dated December 02, 2024 the High Court had disposed of the appeal by enhancing the Market Price of the acquired land to Rs. 4,00,000/- per cottah.

15. Appellant had preferred a Special Leave Petition directed against the judgment and order dated December 02, 2024 of the High Court which was dismissed on August 29, 2025.

16. The issues that have fallen for consideration in this appeal are as follows:-

- i. Whether the respondents can apply for execution of the award for the second time?
- ii. Whether the second execution petition filed before the High Court in its original side is maintainable in view of the award being enhanced on appeal by the Reference Court at Alipore?

17. As has been noted above, the acquisition proceedings had been initiated under the provisions of the Act of 1948. Section 2(b) of the Act of 1948 has defined the Court to mean the Principal Civil Court of the original jurisdiction and to include the Court of

Additional Judge, subordinate Judge or Munsiff. Section 4 of the Act of 1948 has empowered the State to acquire any land which has been requisitioned under Section 3 thereof. Section 7 of the Act of 1948 has laid down the quantification of compensation payable with regard to the land acquired under Section 4. Section 8 of the Act of 1948 has provided for a mechanism where, the owner of the property may be aggrieved by the award made by the Collector. Collector has been empowered under Section 7 (2) of the Act of 1948 to pass an award with regard to the amount of compensation payable in respect of the acquisition made. Under Sub-Section(1) of Section 8, the Collector has been empowered to make a reference to the Court within the meaning of Section 2(b) of the Act of 1948, if a person aggrieved by an award made under Section 7(2) of the Act of 1948 applies to him for such purpose.

18. Sub-Section (2) of Section 8 of the Act of 1948 has laid down that the provisions of the Act of 1894 shall be applied *mutatis mutandis* in respect of reference made under Section 8(1). Section 8A of the Act of 1948 has specified that the provisions of the Code of Civil Procedure, 1908 shall apply to an award made by the Court in reference under Section 8(1). The same does not make the award in the reference, a decree of a Civil Court within the meaning of Section 38 of the Code of Civil Procedure, 1908.

19. Section 3(d) of the Act of 1894 has defined the Court which will deal with the reference made under Section 8(1). Section 18 of the Act of 1894 has dealt with a reference made to Court. Section 25 of the Act of 1894 has specified that the amount of compensation awarded by the Court will not be lowered below the amount awarded by the Collector. Section 54 of the Act of 1948 has specified that, an appeal shall lie to the High Court in respect of any proceedings under the Act of 1894 from the award, or from any part of the award of the Court.

20. Acquisition proceeding initiated under the Act of 1948 is not a Civil suit within the meaning of Section 9 of the Code of Civil Procedure, 1908. Collector adjudicating on the quantum of compensation payable for the acquisition made by publishing the award, is not a civil court adjudicating upon a lis under Section 9 of the Code of Civil Procedure, 1908. The award, therefore, of the Collector, cannot be said to be a decree passed by a Civil Court.

21. In the facts of the present case, one of the owners of the immovable property concerned was aggrieved by the quantum of the award passed by the Collector and applied for making the reference to Court, which was done. Reference Court had enhanced the award on August 17, 2001. Appeal against such order of the reference Court had resulted in further enhancing of the awarded amount on

December 02, 2024. Special Leave Petition directed against such order dated December 02, 2024 had been dismissed on August 29, 2024.

22. The award holder, therefore, is entitled to execute the award before a Civil Court. Neither the Act of 1948 nor the Act of 1894 has any mechanism for execution of the award. In order to avoid such lacunae it has been provided that, the award would be treated as a decree of the Court and executed as such.

23. It is a trite law that so long as the decree remain outstanding, any number of execution petitions are permissible. In the facts of the present case, one execution petition was filed by the respondent before the Alipore Court. Such execution petition did not result in the satisfaction of the award.

24. Appellant has instituted the second execution petition before the High Court in its Original Side. It is not the case of the appellant before us that, the award stands satisfied.

25. So long as the award remains unsatisfied, we find no reasons as to why the respondent cannot file the second execution petition to realize the awarded amount. The first issue is therefore answered by holding that, a second execution petition is maintainable in the event, the awarded amount remains unsatisfied.

26. *Gopal Krishna Mukherjee and Others (supra)* has considered a revisional application under Section 115 of the Code of Civil Procedure, 1908 assailing an order rejecting the application for review of the award. The revisional Court has held that, since, the Code of Civil Procedure, 1908 is applicable to the reference proceedings under the Act of 1948 therefore, such Court has the power to review its award.

27. In a writ petition, seeking to execute the decree passed on reference, by way of a writ petition, ***Ramakanta Das and Others (supra)*** has held that, such decree is executable under Section 26(2) of the Act of 1894. Section 26(2) of the Act of 1894 has clothed the award passed under the Act of 1894 with the legal fiction of a decree. It has therefore, acknowledged that, the award per se is not a decree of the Court and therefore has gone on to clothe the award as a decree of a Court in order to facilitate its execution.

28. *Gurpreet Singh (supra)* has dwelt upon the manner and adjustment of enhanced amount. In the fact of this case, the issue of adjustment and the quantum of dues under the award remaining unpaid be best left for decision by the executing Court.

29. *Bhagyoday Cooperative Bank Limited (supra)* has held that, Sections 38 and 39 of the Code of Civil Procedure, 1908 do not apply to the case of deemed decree which have not been passed by

the Court such as deemed decree under Section 103 of the Gujarat Cooperative Societies Act, 1961 or under Section 36 of the Arbitration and Conciliation Act, 1996.

30. *Sundaram Finance Limited (supra)* has held that, execution or enforcement of an arbitral award can be filed anywhere in the country where such decree can be executed. It has also held that, there is no requirement for obtaining transfer of decree from the Court which has jurisdiction over the arbitral proceedings or the award or whose jurisdiction was passed.

31. Section 38 of the Code of Civil Procedure, 1908 comes into operation when, the decree is passed by a Civil Court. It does not stand attracted, in the event, the award or the order put into execution, by a legal fiction, is treated as a decree of a Civil Court when, no Civil Court did actually pass the award or order put into execution. In other words, when, an award or an order is treated as a decree of a Court, by legal fiction, then, Section 38 of the Code of Civil Procedure is not attracted.

32. In the facts and circumstances of the present case, Section 38 of the Code of Civil Procedure, 1908 is not attracted.

33. The award which is ultimately put in execution, was passed by the Collector and has been clothed as a decree, by virtue of a legal fiction being created under Section 26(2) of the Act of 1894. The

award is not a decree passed by a Court to fall within the parameters of Sections 38 and 39 of the Code of Civil Procedure, 1908. In any event, a deemed decree does not come within the meaning of Section 38 of the Code of Civil Procedure, 1908.

34. It is not the case of the appellant that it has no assets within the ordinary original civil jurisdiction of the High Court where the award was put into execution by the respondent.

35. In view of the discussions above, the second issue is answered by holding that, the execution petition filed by the respondent before the High Court, is maintainable in view of the fact that, the award was passed by the Collector, enhanced on reference and, further enhanced on appeal by the High Court. Principally, the award partakes the character of a decree by legal fiction and does not fall within the meaning of Section 38 of the Code of Civil Procedure, 1908.

36. In such circumstances, the execution petition filed before this Hon'ble Court is maintainable. Learned Executing Court has directed payment to be made. We find no ground to interfere with the directions issued by the Learned Executing Court.

37. During the pendency of the appeal, orders have been passed with regard to the amount payable. We clarify that we have not

adjudicated on the amount receivable by respondents in terms of the award. We keep such points open.

38. APOT No. 277 of 2025 along with all connected applications are dismissed without any order as to costs.

[DEBANGSU BASAK, J.]

39. I agree.

[MD. SHABBAR RASHIDI, J.]