

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
Appellate Side

Present :

THE HON'BLE MR. JUSTICE BISWANATH SOMADDER
AND
THE HON'BLE MR. JUSTICE SANKAR ACHARYYA

MAT 86 of 2016

The State of West Bengal & Ors.
-Vs.-
Niladri Chatterjee & Ors.

For the Appellant : Mr. Kishore Datta, Learned Advocate General
with
Mr. Susovan Sengupta
Mr. Sirsanya Bandopadhyay
.....Advocates

For the Respondents : Mr. Amit Kumar Pan
Mr. Supratim Dhar
Mrs. Tanushri Santra
Mr. Rajesh Kshetry
Mr. Dhananjay Nayak
.....Advocates

Heard on : 23.03.2017, 20.04.2017, 25.04.2017, 04.05.2017,
11.05.2017, 16.05.2017, 16.06.2017, 22.06.2017,
13.07.2017 & 25.07.2017.

Judgement on : 23.08.2017.

BISWANATH SOMADDER, J. :- This appeal arises out of a judgement and order dated 9th December, 2014 passed by the learned Single Judge in WP

No.26559(W) of 2014 (Niladri Chatterjee & Ors. vs. The State of West Bengal & Ors.)

The appellants before us are the State of West Bengal represented by the Secretary, Land and Land Reforms Department, Government of West Bengal, the Collector, Burdwan and other authorities of the State. By the impugned judgement and order, the learned Single Judge was pleased to dispose of the writ petition by directing the State authorities including the Special Land Acquisition Collector to assess the land compensation in terms of the provisions contained under Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the Act of 2013) within a certain timeframe and to communicate the same to the Requiring Body with a further direction upon the Requiring Body to release funds within 4 weeks from getting such intimation. Upon receipt of the fund, the Land Acquisition Collector was directed to make payment to the writ petitioners within 2 weeks thereafter, in case there was any delay in assessing the value of the land and in making payment, the concerned authorities would be liable to pay interest at the rate of 10 per cent per annum upon the land value to be calculated from the expiry of the time limit fixed by the learned Single Judge and till the date of payment. The learned Single Judge made it clear that the writ petitioners would produce and show documents relating to the title to the concerned Collector. The writ petition was accordingly disposed of.

In the instant appeal, several grounds have been taken, which includes the following:-

- “IV. *FOR THAT while passing the said Judgment and Order dated 9th December 2014 the Hon’ble Single Judge failed to consider that there are no reasons for allowing the writ petition and for directing the Appellants to pay compensation to the Writ Petitioners under the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 and hence the same is violative of the principles of natural justice to be set aside.*
- V. *FOR THAT the on or about 21st April 1992, a notification under Section 4(1a) of West Bengal Land (Requisition and Acquisition) Act, 1948 was published in order to acquire the said plots of land being No. 238, 250 and 255, J. L. No.57, Khaitan No. 100 at Mouza – Chakpratabpur though the possession was taken over by the representatives of the Appellant No.7 as Requiring Body on 29th April 1978.*
- VI. *FOR THAT the Hon’ble Single Judge owing to non-consideration of the following facts erred in directing the Appellants to assess the Writ Petitioners / Respondents lands’ value as per the provisions under the new Act of 2013:-*

- a) *That, the requisition of land concerned was initiated under Section 4(1A) of the Act – II, 1948.*
- b) *That, the Act of 1948 was repealed with effect from 1st April 1997.*
- c) *That, Land Acquisition Act, 1894 stands repealed with effect from 31st December 2013.*
- d) *That, under Section 24(1) of the Act of 2013 provides that cases initiated and alive under Act-I can only be continued and concluded. But there is no provision for converting the lapsed Act-II Case into the new Act of 2013*

VII. *FOR THAT the Hon'ble Single Judge failed to consider the fact that there is no provision for concerting the lapsed Act – II case into the ambit of the new Act of 2013. Further giving current market price for the land possession of which was taken long back in the year 1978 will not be just, reasonable and appropriate. To ensure justice the value of the said plot of land may be computed as on the date of taking possession of such plot of land but awarding current market price will be a huge and unjustified burden on the State exchequer and be detrimental to the interest of the Welfare State.*

- VIII. *FOR THAT the Hon'ble Single Judge erred in Law in not considering that the West Bengal (Requisition and Acquisition) Act, 1948 (Act – II of 1948) was repealed with effect from 1st April 1997. Sections 9(3A) and 9(3B) were interested in Land Acquisition Act 1894 for revival and completion of cases initiated under West Bengal (Requisition and Acquisition) Act, 1948 (Act – II of 1948) by December, 2015. The Land Acquisition Act 1894 is repealed with effect from 31st December 2013.*
- X. *FOR THAT the Hon'ble Single Judge failed to consider the fact that any concession, made on behalf of the State, by any Learned State Advocate other than the Learned Advocate General cannot be considered and/or treated as a valid concession on behalf of the state. Even a concession made by the Learned Advocate General has to be read in the light of right sense of the law.*
- XI. *FOR THAT the Hon'ble Single Judge erred in Law in not considering that the acquisition under Act – II was initiated long ago by taking possession of the concerned land. Hence giving current market price for past acquisition will be inappropriate. For the sake of uniformity and justice, the value of land may be determined as on the date of possession.*
- XII. *FOR THAT the Hon'ble Single Judge erred in Law in not considering that the West Bengal (Requisition*

and Acquisition) Act, 1948 (Act – II of 1948) was repealed with effect from 1st April 1997. Sections 9(3A) and 9(3B) were interested in Land Acquisition Act 1894 for revival and completion of cases initiated under West Bengal (Requisition and Acquisition) Act, 1948 (Act – II of 1948) by December, 2015. The Land Acquisition Act 1894 is repealed with effect from 31st December 2013.

XIII. FOR THAT the Hon'ble Single Judge erred in Law in not considering that cases initiated under Section 24(1) of Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 and alive under Act – I can be constituted and concluded. There are no provisions for converting the lapsed Act – II cases.

XIV. FOR THAT the Hon'ble Single Judge erred in Law in not considering that the acquisition under Act – II was initiated long ago by taking possession of the concerned land. Hence giving current market price for past acquisition will be inappropriate. For the sake of uniformity and justice, the value of land may be determined as on the date of possession.

XV. FOR THAT the Hon'ble Single Judge further failed to consider that once Section 4(1)(a) of the Act II was published by Gazette Notification the land in question would automatically vest to the Government of West Bengal being the Appellant

herein, even if, no award was passed relating such land in question.

XVI. FOR THAT the Hon'ble Single Judge further failed to consider that the owner of the land in question lost their title in terms of issuance of Gazette Notification, under Section 4 (1)(a) of the Act II the State, being appellant herein, has become owner of such land and in terms of provisions made in the new L. A. Act of 2013, Section 6 of the General Clauses Act will be applicable in the facts and circumstances of the case and as such the compensation would be made in terms of the earlier statute being Act I of 1894.

XVII. FOR THAT once Section 4(1)(a) of the Act II was published by Gazette Notification, the land in question would automatically vest on the Government of West Bengal being the Appellant herein, even if, no award was passed relating such land in question.

XVIII. FOR THAT the owner of the land in question lost their title in terms of issuance of Gazette Notification, under Section 4(1) (a) of the Act II the State, being appellant herein, has become owner of such land and in terms of provisions made in the new L. A. Act of 2013, Section 6 of the General Clauses Act will be applicable in the facts and circumstances of the case and as such the

compensation would be made in terms of the earlier statute being Act I of 1894.

XIX. FOR THAT the Hon'ble Single Judge further failed to consider that the land acquisition of the concerned land was initiated under Act – II of 1948 and not under Act – I of 1894. Hence the provisions of Section 24 of the L. A. Act 2013 as far as payment of compensation is concerned are not applicable.”

Admittedly, the respondents / writ petitioners are owners in respect of R S Plot nos.238, 250 and 255 situated at Mouza Chakpratabpur, J.L. No. 57 in the district of Burdwan.

For the purpose of construction of an embankment on river Ajay from Sagira to Kogram, the Collector of the district of Burdwan initiated a proceeding under the West Bengal Land (Requisition and Acquisition) Act, 1948 (hereinafter referred to as the Act of 1948) being L.A. case no. 126 of 1976-77.

The possession of the said land was taken over on 29th April, 1978 upon serving an order under section 3(1) of the said Act of 1948. On 2nd July, 1993, the land was acquired upon publication of a notice under section 4(1a) of the Act of 1948, in the Calcutta Gazette.

According to the learned Advocate General, the questions which arise for consideration are :

- 1) Whether promulgation of the Act of 2013 would revive the rights, lost by the respondents / writ petitioners by reason of their failure to assert and enforce such right to compensation either under the Act of 1948 or under the Act of 1894 on the ground of unreasonable delay on their part to file the writ petition.
- 2) To what reliefs the respondents / writ petitioners are entitled to?

According to him, the land of the writ petitioners were requisitioned and possession thereof was taken on 29th April, 1978. Notice of acquisition under section 4 (1a) was issued on 21st April, 1992. Although no award was passed, the first representation was made on 20th December, 2011, i.e. after more than 33 years from taking over possession. The second representation was made on 30th July, 2014, i.e., after more than 36 years from taking over possession and the writ petition was filed thereafter. He referred to and relied upon a decision of the Supreme Court rendered in the case of **State of Maharashtra vs. Digambar** reported in (1995) 4 SCC 683 in order to submit that it was also a case of acquisition of land where the writ petitioner came before the Hon'ble Court after 20 years delay. In the instant case, the delay is of 35 years. He submitted that the Hon'ble Supreme Court in that matter has held that the alleged violation of rights cannot be a ground for claiming discretionary relief under Article 226 of the Constitution of India. The writ petitioner is not relieved of his obligation to establish his unblameworthy conduct of getting relief even if it is against the welfare State.

According to the learned Advocate General, the writ petitioners have not stated in the writ petition as to why they have approached this Court after delay of more than 36 years and in view of the aforesaid decision of the Hon'ble Supreme Court, the writ petition was liable to be dismissed. He further submitted that in view of section 4 (1a) and section 4 (2) of the Act of 1948, the lands of the writ petitioners have vested absolutely in the State Government, free from encumbrances and the period of requisition came to an end on 21st April, 1992. On and from 21st April, 1992, the State is the owner of the lands in question. In view of section 7A of the Act of 1948, unless the award is made within 3 years from 21st April, 1992, the notice under section 4 (1a) of the Act of 1948 would lapse. He further submitted that admittedly in the facts of the instant case no award has been passed till date. Section 9 (3A) and section 9 (3B) of the Land Acquisition Act of 1894(hereinafter referred to as the Act of 1894) take care of situations where award under section 7A of the Act of 1948 was not passed. In the present case, admittedly, a notice under section 9 (3A) and section 9 (3B) of the Act of 1894 was not issued. Section 9(3B) of the Act of 1894, which ought to have been applied in the instant case, recognizes two things, namely, (a) section 16 of the Act of 1894 shall be deemed to have been complied with and (b) second proviso recognizes that the land has already vested absolutely in the Government. The combined effect is legislative approval of the legal position that the lands of the writ petitioner stood absolutely vested State.

He further submitted that assuming Act of 2013 applies, section 114 of the Act of 2013 also recognises applicability of section 6 of the General Clauses Act (in this case, section 8 of the Bengal General Clauses Act). Therefore, the vesting which has taken place under the Act of 1948 was also saved by the application of section 8 of the Bengal General Clauses Act, even after promulgation of the Act of 2013. In this context, the following judgements have been referred to and relied upon by the learned Advocate General:-

- a. (1970) 2 SCC 149 [Lt. Governor of Himachal Pradesh vs. Sri Avinash Sharma];**
- b. (1993) 4 SCC 369 [Satendra Prasad Jain vs. State of U. P.];**
- c. AIR 1996 SC 122 [Awadh Bihari Yadav & Ors. vs. State of Bihar];**
- d. AIR 1996 SC 1170 (U.P. Jal Nigam & Anr. vs. Kalra Properties)**
- e. (2015) 10 SCC 241 (Laxmi Devi vs. State of Bihar).**

Further, according to the learned Advocate General, the Act of 1948, admittedly, was temporary statute and its tenure was extended from time to time till 31st March, 1997. It is well settled principle of law that with the expiry of a temporary statute, the statute is not dead for all purposes. The situation is the same

even in the absence of provisions like section 8 of the Bengal General Clauses Act or section 6 of the General Clauses Act. In this context, he has referred to and relied on the following judgements :-

- a. 1947 (1) All ER 205 (Wicks vs. Director of Public Prosecutors);**
- b. 76 CWN 952;**
- c. 1946(2) All ER 529 (R vs. Wicks);**
- d. AIR 1962 SC 945 (State of Orissa vs. Bhupendra Kumar Bose).**

He further submitted that section 24 of the Act of 2013 has no manner of application at all in the facts of the instant case since no proceedings were initiated under the Act of 1894. In order to apply section 24 (1)(a) of the Act of 2013, one of the conditions is “where no award under section 11 of the said Land Acquisition Act has been made.....” In this case, since no notice was issued under section 9(3A) or section 9 (3B) of the Act of 1894, the question of making or failing to make award under section 11 did not arise. The purpose of the Act of 2013 is to provide for payment of compensation for acquiring lands. In view of the provisions of section 4 (1a) of the Act of 1948, the lands stood vested in favour of the State as per section 4 (2) of the Act of 1948. He submitted that it is well settled principle that a vested land

cannot be acquired. In this context, he referred to and relied on the following judgements:-

a. 2008 (1) CLJ (Cal) (Bangur Land Development Corporation Ltd. vs. State of West Bengal);

b. (2004) 7 SCC 362 (Meher Rusi Dalal vs. Union of India).

He further submitted that assuming the writ petitioners were entitled to relief and that compensation is required to be paid to the writ petitioners at this belated stage, the date of reference is the date of issuance of notification under section 4(1a) of the Act of 1948. In other words, compensation should be calculated on the price prevailing on the date of notification under section 4(1a) of the Act of 1948.

On the other hand, the learned counsel appearing on behalf of the respondents / writ petitioners submitted that in view of the incorporation of section 7A under the Act of 1948 by way of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1996, the notice under section 4(1a) of the Act of 1948, which was published in the Calcutta Gazette on 2nd July, 1993 stood lapsed on 2nd July, 1996 as no award was made on or before 2nd July, 1996 in view of the statutory mandate as provided under section 7 A of the said Act of 1948. Since no award could be made within the statutory period as stipulated in section 7A of the Act of 1948, the said notice under section 4(1a) of the Act of 1948 dated 2nd July, 1993 stood

lapsed meaning thereby, vesting, so far as the said land is concerned, came to an end. In other words, the said land is free from vesting on and from 2nd July, 1996. He further submitted that the Collector, being the appellant no.2 herein, never made any attempt to convert the said proceedings so initiated under the Act of 1948 into the Act of 1894 during the lifetime of the said Act of 1894. The Collector was under a statutory obligation – in view of Land Acquisition (West Bengal Amendment) Act 1997 – to convert the said proceedings so initiated under the Act of 1948 into the Act of 1894 during the lifetime of the Act of 1894 for the purpose of determining the compensation including regularising the possession in question since on and from 1st April, 1997 – with the expiry of the Act of 1948 – no proceeding in respect of the said land was pending in the eye of law by which the State authorities can continue with the possession of the said land which was taken over with due process of law. Therefore, the State authorities are now illegally and forcibly enjoying the possession of the land on and from 1st April, 1997, in colourable exercise of power.

After taking into consideration the respective contentions advanced by the parties, the primary ground of delay in approaching the writ Court – as sought to be raised by the State of West Bengal in the instant appeal while referring to and relying on the judgement of **State of Maharashtra vs. Digambar** reported in (1995) 4 SCC 683 – is required to be addressed at first.

In **State of Maharashtra v. Digambar** reported in (1995) 4 SCC 683, the salient facts of the case were as follows:

An agriculturist of Vipani village situated in the district of Nandard of Maharashtra had filed a writ petition before the Aurangabad Bench of the Bombay High Court in the year 1991 against the State of Maharashtra. The relief sought in the writ petition was for issuance of a mandatory direction upon the Government of Maharashtra to grant compensation to him for his land alleged to have been utilised by the Government without his consent for Vepana-Gogri Road – a road work carried out by the agencies of the State Government, in the course of execution of scarcity relief works undertaken by the State Government in the year 1971-72. There were other 191 similar writ petitions. The Aurangabad Bench of the Bombay High Court heard the matters set down for admission and negated the prayer made on behalf of the State, which had urged for dismissal of the writ petitions on the ground of delay on the part of the writ petitioners, i.e., undue delay of 20 years, that had occurred in filing of the writ petitions. The Court, instead, passed a mandatory order directing the Collector or any other officer nominated by him, but not below the rank of Deputy Collector to initiate proceedings under the Land Acquisition Act, 1894.

While rendering the judgment, Venkatachala, J. at the outset, took note of the fact that during the year 1971-72, when acute scarcity conditions prevailed in nearly 23,000 villages of the State of Maharashtra, large-scale scarcity relief works had to

be undertaken by the State Government to provide employment to small agriculturists and agricultural labour of those villages for earning their livelihood. Such relief works included 38,000 k.m. of road works. As the State Government was not in a position to divert relief funds at its disposal for payment of compensation for lands to be utilised 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. It has been specifically observed by Venkatachala, J. in paragraph 2 of the judgment – as reported – that Collectors were, indeed, specially instructed to impress upon the 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** (emphasis supplied by us).

This was the factual background for the Supreme Court to make the following observation in paragraph 25 of its judgment:

“**25.** In our view, the above allegation is in no way sufficient to hold that the writ petitioner (respondent here) has explained properly and satisfactorily the undue delay of 20 years which had occurred between the alleged taking of possession of his land and the date of filing of writ petition in the High Court. We cannot overlook the fact that it is easy to make such kind of allegations against anybody that

too against the State. When such general allegation is made against a State in relation to an event said to have occurred 20 years earlier, and the State's non-compliance with petitioner's demands, the State may not at all be in a position to dispute such allegation, having regard to the manner in which it is required to carry on its governmental functions. 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 for grant of compensation to his land alleged to have been taken by the governmental agencies, would suggest that his 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."

The Supreme Court thereafter, proceeded to further observe to the effect that the writ petitioner/respondent was guilty of laches or undue delay in approaching the High Court and the principle of laches or undue delay disentitled the writ petitioner for obtaining discretionary relief under Article 226 of the Constitution from the High Court, particularly, when virtually no attempt had been made by the writ petitioner to explain his blameworthy conduct of undue delay or laches. The Supreme Court proceeded to hold that the High Court, therefore, was wholly wrong in granting relief

in relation to inquiring into the allegations and granting compensation for the writ petitioner's land alleged to have been used for scarcity relief road works in the year 1971-72.

The observations of the Supreme Court could have been completely different had it not been an acquisition of land where **no right of compensation accrued at the time of acquisition**. In the facts of the case before the Supreme Court, as discussed hereinbefore, the land required for scarcity relief works were actually **donated** to the Government “**without any claim for compensation**” (emphasis supplied) during the year 1971-72 and the writ petitioner had approached the writ Court after an undue delay of twenty years for grant of compensation to his land alleged to have been taken by the Government agencies.

In the present appeal, the fact situation is not remotely similar to the case before the Supreme Court, i.e., **State of Maharashtra v. Digambar** (supra) where land was “**donated**” to the Government “**without any claim for compensation**”. As such, the ratio of the said judgment is wholly inapplicable in the facts of the instant case.

Now so far as the merits of the present matter is concerned, we notice that possession of the land was taken over on 29th April, 1978, upon serving an order under 3(1) of the Act of 1948. Section 3(1), which was subsequently omitted from the statutory book with effect from 1st April, 1994, read as follows:-

“3. Power to requisition. –If the State Government is of the opinion that it is necessary so to do for maintaining supplies and services essential to the life of the community or for increasing employment opportunities for the people by establishing commercial estates and industrial estates in different areas or for providing proper facilities for transport, communication, irrigation or drainage, or for the creation of better living conditions in rural or urban areas, not being an industrial or other area excluded by the State Government by a notification in this behalf, by the construction or reconstruction of dwelling places in such areas or for purposes connected therewith or incidental thereto, the State Government may, by order in writing, requisition any land and may make such further orders as appear to it to be necessary or expedient in connection with the requisitioning :

Provided that no land used for the purpose of religious worship or used by an educational or charitable institution shall be requisitioned under this section.”

On 2nd July, 1993, the land was acquired upon publication of notice under section 4(1a) of the Act of 1948. Section 4(1a) of the Act of 1948, is reproduced hereinbelow :-

“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.”

Section 7A of the Act of 1948 casts a mandate upon the Collector to make an award within a period of three years from the date of publication of the notice in the *Official Gazette* under sub-section(1a) of section 4 of the Act of 1948. The said section 7A of the Act of 1948 is reproduced hereinbelow:-

“7A. Award by Collector. – The Collector shall make an award under sub-section (2) of section 7 within a period of three years from the date of publication of the notice in the *Official Gazette* under sub-section (1a) of section 4 (hereinafter referred to as the said notice), and if such award is not made within the period as aforesaid, the said notice shall lapse :

Provided that in a case where the said notice has been published more than two years before the commencement of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1994, the award shall be made within a period of one year from the date of commencement of the Act.”

We notice that in the facts of the instant case during the pendency of the proceeding, the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1994, came into force on and from 31st March, 1994 and by the said Amendment Act, section 3 which deals with power to requisition stood omitted with effect from 1st April, 1994. In view of such omission, power to requisition was taken away with effect from 1st April, 1994. However, the life of the Act of 1948 was extended till 31st March, 1997. Section 7A, which was inserted by virtue of the amendment, brought into effect on 8th October, 1996, made it mandatory for the Collector to make an award under sub-section (2) of section 7 within a period of three years from the date of publication of the notice in the Official Gazette under sub-section (1a) of section 4 and if such award was not made within the said period of three years, the notice lapsed. After the life of the Act of 1948 expired on 31st March, 1997, sub-section 3 of section 9 of the Act of 1894 was amended in terms of the Land Acquisition (West Bengal Amendment) Act, 1997, with effect from 2nd May, 1997 by insertion of two sub-sections, namely, sub-sections (3A) and (3B) which reads as follows :-

“(3A) The Collector shall also serve notice to the same effect on all such persons known 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 (West Ben. Act II of 1948) (hereinafter

referred to in this section as the said Act), as re-enacted by the West Bengal Land (Regulation and Acquisition) Re-enacting Act, 1977 (West Ben. Act XV of 1977), and in every such case, the provisions of sub-section (1) of section 4, section 5, section 5A, 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.

(3B) 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 (1a) of section 4 of the said Act, and , in ever such case, the provisions of section 4, section 5, section 5A, 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 (1a) 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 dues 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.”

Based on the scheme of the provisions of law as quoted above, it is evident that in the facts of the instant case, the notice under section 4(1a) of the Act of 1948 so published in the Calcutta Gazette on 2nd July, 1993 stood lapsed on 2nd July, 1996, as no award was made on or before 2nd July, 1996 in view of the statutory provision as contained in section 7A of the Act of 1948, which came into effect in terms of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1996. The concerned Collector never complied with the mandatory provisions as provided under sub-sections (3A) and (3B) which were inserted after sub-section 3 of section 9 of the Act of 1894 by virtue of the Land Acquisition (West Bengal Amendment) Act, 1997 which came into effect from 2nd May, 1997. In this context, we may also take notice of section 11A of the Act of 1894 which provides for the period within which

an award shall be made. A proviso was introduced in terms of the same amendment, which came into effect from 2nd May, 1997:-

“Provided further that in respect of the acquisition of the land referred to in sub-section (3A) , and sub-section (3B) of section 9, the award shall be made within a period of two years from the date of the issue of the public notice under section 9.”

The Act of 1948 was a temporary statute and as such, neither the provisions of section 8 of the Bengal General Clauses Act or section 6 of the General Clauses Act would apply only for the reason that the said statute expired by itself after the period for which it was promulgated ended. In such a case, there is no repeal for the reason that the legislature never applied its mind to a live statute in order to obliterate it. In all cases where a temporary statute expires, it expires on its own force without being obliterated by a subsequent legislative enactment. However, the exception would be in a situation where a temporary statute is in fact repealed at a point of time earlier than its expiry date. In that situation, section 8 of the Bengal General Clauses Act or for that matter, section 6 of the General Clauses Act, would apply. In this context, one may take notice of the observations made by the Supreme Court in paragraph 37 of the judgement rendered in the case of **Fibre Boards Private Limited, Bangalore vs. Commissioner of Income Tax, Bangalore** reported in (2015) 10 SCC 333. Such an exception is not the case before us. None of the judgements referred to and relied

upon by the learned Advocate General in this regard, as such, are applicable in the facts of the instant case.

As observed earlier, the failure on the part of the Collector to serve notice in terms of the mandatory requirement of sub-section (3B) (which came into effect from 2nd May, 1997) under section 9 of the Act of 1894 after the Act of 1948 came to an end, has resulted in the proceedings having lapsed.

At this stage, we take notice of the written instruction which were placed before the learned Single Judge by the learned counsel for the State / respondents, which reads as follows:-

“Land in questioned was requisitioned measuring area 24.56 acres of Mouza Chakpratpur, JL No. 57 in LA Case No. 126R/76-77 by publishing Notice un/s 3 of West Bengal Land Acquisition Act, 1948 and Notification u/s 4(1a) of Act-1948 was published in Calcutta Gazette on 02.07.1993. possession of land was handed over to Requiring Body on 29.04.1978 for Construction of Ajoy Right Ex-Zamindary Embankment, Sagira to Kogram.

But payment couldn't be made for the said acquisition for want of fund. Executive Engineer, Damodar Head Works Division, Durgapur-2 was requested for placement of fund amount Rs.20,76,183.00. But due to non-placement of

**fund, no further action was taken from this end.
Placement of fund which is the liability of
Requiring Body.”**

It is clearly evident from the above instructions that the possession of the land was handed over to the Requiring Body on 29th April, 1978, but compensation could not be made for the said acquisition for want of fund.

The question in the facts of the instant case is not whether the writ petitioners are liable to be paid compensation but whether such compensation shall be paid in terms of the Act of 2013.

If one looks carefully, one would notice that in the facts of the instant case, the land was requisitioned under LA Case No. 126R/1976-77 and was handed over to the Requiring Body on 29.04.1978 for construction of Ajoy Right Ex-Zamindari Embankment, Sagira to Kogram. Notification under section 4(1a) of the Act of 1948 was subsequently published in the Calcutta Gazette on 2nd July, 1993. Although an amount of Rs.20,76,183/- was sought for from the Requiring Body, i.e., Executive Engineer, Damodar Head Works Division, Durgapur-2, but the said authority simply failed to place the fund. Subsequently, after expiry of the Act of 1948, the Collector of Burdwan simply abdicated his statutory duty to issue notice under section 9(3B) of the Act of 1894. This could be either due to sheer callousness or negligence on the part of the Collector of Burdwan. Undoubtedly, it is only due to the Collector's failure to issue notice under section 9(3B) of the Act of 1894, the land acquisition

proceeding stood lapsed. However, whether *ipso facto* such a lapse translates into a claim for compensation under the provision of the Act of 2013 can be answered simply by visiting section 24 of the Act of 2013. It will be noticed from a plain reading of the said section that there is a phrase, “proceedings initiated under the Land Acquisition Act, 1894”. In the facts of the instant case, it cannot be held – by any stretch of imagination – that proceedings were ever “initiated” under the said Act of 1894. As such, abdication of statutory duty on the part of the Collector of Burdwan to issue notice under section 9(3B) of the Act of 1894 – either due to sheer callousness or negligence on his/her part – cannot *ipso facto* translate into a claim for compensation under the Act of 2013. We do not know what prevented the writ petitioners from approaching the writ Court any time between initiation of L.A. Case No. 126R/1976-77 and the year 2014, for the purpose of seeking appropriate relief(s). Merely by making two representations – one on 20th December, 2011 and the other on 30th July, 2014 – they have sought for a issuance of a writ in the nature of mandamus for getting compensation under the Act of 2013 upon filing a writ petition only in the year 2014, by which time the said Act of 2013 has already come into force. We find that in the facts of the instant case, the writ petitioners were sleeping over their valuable right to get compensation for decades. As such, they simply cannot approach the writ Court one fine morning when the Act of 2013 has come into force in order to seek compensation under the said Act of 2013, upon

invoking section 24 of the said Act of 2013, when proceedings were never “initiated” under the Act of 1894.

However, the respondents / writ petitioners are certainly entitled to be paid compensation as applicable in their case. From the written instruction – which was taken notice of by the learned Single Judge – we find that a sum of Rs.20,76,183/- was sought for from the Requiring Body, (i.e., Executive Engineer, Damodar Head Works Division, Durgapur-2) for payment of compensation to the writ petitioners. The said sum, together with interest @ 8 % per annum – to be calculated from the date of taking possession of the land-in-question, i.e., 29th April, 1978 (as admitted by the appellants in Ground V of the Memorandum of Appeal) till date of disbursement of payment – shall be paid within a period of eight weeks from date to the respondents / writ petitioners by the competent authority of the State.

The impugned judgement and order dated 14th December, 2014 passed by the learned Single Judge in WP No.26559(W) of 2014 (Niladri Chatterjee & Ors. vs. The State of West Bengal & Ors.) stands modified accordingly.

Urgent photostat certified copy of this judgement and order, if applied for, be supplied to the parties on priority basis.

I agree.

(SANKAR ACHARYYA, J.)

(BISWANATH SOMADDER, J.)

