

Tulika Chowdhury & Ors Vs State Of West Bengal & Ors

Court: Calcutta High Court (Appellate Side)

Date of Decision: Jan. 14, 2025

Acts Referred: West Bengal Land (Requisition and Acquisition) Act, 1948 "Section 3(1), 4(1a), 7A Land Acquisition (West Bengal Amendment) Act, 1997 "Section 9(3B)

Hon'ble Judges: Hiranmay Bhattacharyya, J

Bench: Single Bench

Advocate: Amit Kumar Pan, Tanusri Santra, Chandi Charan De, Tulshi Das Ray

Final Decision: Allowed

Judgement

Hiranmay Bhattacharyya, J

1. Petitioners have prayed for issuance of a writ of mandamus commanding the respondents to determine and pay compensation to the petitioners

upon initiating a fresh proceeding in respect the lands of the petitioner in terms of the provisions of the Right to Fair Compensation and Transparency

in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "the 2013 Act"). Alternatively, the petitioners have prayed for payment of

occupation charges with effect from 01.04.1997 till the date of initiation of proceeding under 2013 Act or handing over possession of the land if the

respondents do not intend to acquire the same.

2. A proceeding under the West Bengal Land (Requisition and Acquisition) Act, 1948 (for short "Act II of 1948") was initiated being R.A. Case No.

72 of 1975-76 for construction of Burwan - Belgram road. The Collector, Murshidabad issued an order on 07.12.1981 under Section 3(1) of Act II of

1948 for requisition of several plots of land within mouja Burwan, J.L.No. 56, under Police Station. Burwan in the district of Murshidabad.

3. Petitioners claim to be the owners of R.S. Plot Nos. 7196, 7202, 7191, 7185, 7186, 7192 and 6181 of mouja Burwan by virtue of inheritance.

4. The aforesaid plots along with several other plots of mouja Burwan were requisitioned under the aforesaid proceeding. Petitioners claim that the

order under Section 3(1) was served upon their predecessor-in-interest on 09.12.1981. Notice under Section 4(1a) of Act II of 1948 was published in

the Official Gazette on 19.12.1994.

5. Petitioners allege that no award under Act II of 1948 was declared during the life time of the said Act and no steps were taken in terms of the

Land Acquisition (West Bengal Amendment) Act, 1997 for continuing with the acquisition proceeding. The petitioners claim that the land has been

utilised for the purpose of construction of road without paying compensation to them.

6. State of West Bengal contested the writ petition by filing an affidavit-in-opposition and a Supplementary Affidavit. In the said affidavits it is

contended that notice under Section 9(3B) of the Land Acquisition (West Bengal Amendment) Act, 1997 was served on 21.08.1998 and the award

was declared on 29.03.2000. It has been further stated therein that the names of the predecessor-in-interest of the petitioners are appearing as

awardees in the said Award.

7. Mr. Pan, learned advocate for the petitioner submitted that the notice under Section 4(1a) of Act II of 1948 stood lapsed as no award was made by

the Collector within the period of three years from the date of publication of such notice in the Official Gazette. In support of such contention, he

placed reliance upon the decision of the Hon'ble Full Bench in the case of State of West Bengal vs. Sabita Mondal reported at 2011(3) CHN (Cal)

555. He submitted that since the Land Acquisition Act, 1894 has been repealed, no award can be made under the said Act. Mr. Pan submitted that

since the land in question has been utilised for construction of road, the acquisition proceeding should be completed by following the relevant provisions

of the 2013 Act. In support of such contention, Mr. Pan placed reliance upon the decision of the Hon'ble Division Bench in the case of The State of

West Bengal & Ors. vs. Ganesh Samanta reported at (2014) 4 WBLR (Cal) 996.

8. Per Contra, Mr. De, Learned Additional Government Pleader contended that notice under Section 9(3B) of Land Acquisition (West Bengal

Amendment) Act, 1997 was served upon the petitioners on 21.08.1998 and award was declared on 29.03.2000. He contended that the names of the

predecessor-in-interest of the petitioners appeared in the list of awardees of the said Award.

9. Heard the learned advocates for the parties and perused the materials placed.

10. The Collector, District Murshidabad was of the opinion that several plots of land within mouja-Barwan in the district of Murshidabad was

necessary for the purpose of construction of Burwan-Belgram road and a proceeding being R.A. Case No. 72 of 1975-76 was initiated under Act II of

1948. An order under Section 3(1) of the said Act was made on 07.12.1981 for requisition of several plots of lands which has been specifically

mentioned in the schedule of the said order.

11. Petitioners claim to be the owners of several plots of land which finds place in the schedule of the order under Section 3(1) of Act II of 1948.

12. It is not in dispute that the plots of land in question have been utilised for construction of a road which is permanent in nature.

13. Record reveals that the possession of the lands were handed over to the Requiring Body on 15.12.1981.

14. Notice under Section 4(1a) of Act II of 1948 was published in the Calcutta Gazette on 19.12.1994.

15. In *Sabita Mondal (supra)*, the Hon'ble Full Bench noted that the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1996 deemed

to have come into force from 01.04.1994. It was held that the effect of the aforesaid Amendment Act of 1996 was that in respect of notices under

Section 4(1a) of Act II of 1948 issued after 31.03.1992, the award must be passed within three years from the date of publication of notice under

Section 4(1a) with the further stipulation, that in default of passing of award within the aforesaid time limit, the notification issued under Section 4(1a)

would lapse.

16. The Hon'ble Full Bench in *Sabita Mondal (supra)* also noted that The Land Acquisition (West Bengal Amendment) Act, 1997 came into operation

with effect from 01.04.1997. It was held that the effect of the said Land Acquisition (West Bengal Amendment) Act, 1997, prevented all those

notices under Section 4(1a) issued after 01.04.1994 from being lapsed by giving scope of revival under Section 9(3B) of the said Act if award had not

been passed within 3 years from the date of publication of such notice and which would otherwise lapse if the Act of 1997 would not come into

operation at the midnight of 31.03.1997.

17. In the case on hand, Notice under Section 4(1a) was published on 19.12.1994. The said notice did not lapse on the midnight of 31.03.1997. In other

words, the said notice was surviving as on 01.04.1997.

18. It is the case of the State of West Bengal that the acquisition proceeding initiated under Act II of 1948 was continued by serving notice under

Section 9(3B) of the Land Acquisition (West Bengal Amendment) Act, 1997 on 21.08.1998 and an award was declared on 29.03.2000.

19. Pursuant to the order passed by this Court on 12.09.2024, Mr. De, learned advocate produced the original records before this Court on 14.11.2024.

This Court had perused the original records pertaining to the said proceeding.

20. After going through the original records, this Court found that the draft award was prepared and the same was submitted for approval on

28.03.2000. Record revealed that on 04.08.2000, the award along with other papers were returned by the L. R. Department as the period of Award

expired and it was observed that recasting of Award is necessary.

21. In view thereof, this Court is not inclined to accept the contention of the State of West Bengal that the award was declared on 29.03.2000.

22. In course of hearing of the writ petition, Mr. De, could not place any document to satisfy this Court that any award was passed subsequently in

respect of the plots of land which is the subject matter of this writ petition.

23. Section 7A of Act II of 1948 deals with the consequence of non publication of the Award within three years from the date of publication of notice

under Section 4(1a) of the said Act. Section 7A is extracted hereinafter-

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 to 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 commencement of the West Bengal Land (Requisition and

Acquisition) (Amendment) Act, 1994 (West Ben. Act XIV of 1994), the award shall be made within a period of one year from the date of commencement of the Act.

Explanation - in computing the period of three years or one year, as the case may be, under this Section, the period during which any action or proceeding to be

taken in pursuance of the said notice is stayed by an order of a Court having jurisdiction shall be excluded.

24. In view of Section 7A, the Collector was obliged to make an Award within a period of three years from the date of publication of notice under

Section 4(1a) in the Official Gazette. Failure on the part of the Collector to make an award within the prescribed period results in lapsing of the notice

under Section 4(1a).

25. No material has been produced before this Court to show that award was passed within the prescribed period.

26. To the mind of this Court, the notice under Section 4(1a) stood lapsed as no award was passed within the prescribed period. This Court

accordingly holds that with the lapsing of the said notice, the State cannot claim that the title of the plots in question which vested with the State by

operation of law under Section 4(1a) of the Act still remain with the State. With the lapsing of the notice under Section 4(1a), title of the plots in

question would revert back to the original owners.

27. It is, however, not in dispute that the lands in question have been utilised for construction of roads. Such utilisation of the lands is permanent in

nature. A person cannot be deprived of his property without payment of adequate compensation to him in accordance with law. Since the plots in

question have been utilised, State has to pay adequate compensation to the owners of the said lands in accordance with law.

28. In the meantime, the Land Acquisition Act, 1894 stood repealed and the 2013 Act has come into force.

29. In Ganesh Samanta (supra), the Hon'ble Division Bench has held that in view of Section 24(1)(a) of the 2013 Act, the State cannot complete the

acquisition proceeding by following Section 9(3A) of the Land Acquisition Act, which has since been repealed. A direction was passed upon the State

respondent to complete the acquisition proceeding by following the relevant provisions of the 2013 Act.

30. By applying the proposition of law laid down in Ganesh Samanta (supra), this Court is inclined to direct the State respondents to complete the

acquisition proceeding by following the relevant provisions of the 2013 Act.

31. Accordingly, the writ petition stands allowed. State respondents are directed to complete the acquisition proceedings by applying the relevant

provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 as expeditiously as

possible but positively within a period of six months from the receipt of a server copy of this order. There shall, however, be no order as to costs.

32. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.