

(2002) 10 CAL CK 0032

Calcutta High Court

Case No: F.M.A. No. 466 of 2002 and C.A.N. No. 2385 of 2002

State of West Bengal

APPELLANT

Vs

Soumendra Mohan Dey

RESPONDENT

Date of Decision: Oct. 10, 2002**Acts Referred:**

- West Bengal Land (Requisition and Acquisition) Act, 1948 - Section 11, 11A, 16, 18, 23

Citation: (2003) 1 ILR (Cal) 410**Hon'ble Judges:** Ashok Kumar Mathur, C.J.; Jayanta Kumar Biswas, J**Bench:** Division Bench**Advocate:** Tarun Roy and Mitali Bhattacharjee, for the Appellant; M.K. Basu, D. Saha Roy, P.S. Chatterjee and S.K. Rakshit, for the Respondent**Final Decision:** Allowed

Judgement

Ashok Kumar Mathur, C.J.

This is an appeal directed against the order passed by the Learned Single Judge dated April 16, 2001 whereby the Learned Single Judge has allowed the writ petition and directed that since the writ Petitioner's land was taken long back and construction has already been made thereon, therefore, the land cannot be returned back to the Petitioner. He directed that the compensation should be determined immediately and the relevant date for the purpose of calculation of compensation shall be the date when Section 7A of the Act II of 1948 was introduced. Aggrieved against this order the present appeal has been filed.

2. The brief facts which are necessary for disposal of this appeal are that the Petitioner filed the present writ petition praying for issuance of a writ of mandamus directing the Respondents to pay to the Petitioner compensation for acquisition of land of the Petitioner under the West Bengal Land (Requisition and Acquisition) Act, 1948 (hereinafter referred to as Act II of 1948) -after assessment of the same. Land of the petitioner being R.S. Plot No. 13, measuring 13 decimal and R.S. plot No. 389

measuring about 22 decimals of Mouza and P.S. Serampore, District Hooghly were requisitioned under Sub-section (1) of Section 3 by order dated January 18, 1977 under Act II of 1948 for construction of building of P.W. D. (Roads), which reads as under:

Requisition Case No. 1-35/76-77 5037-38 LA.

Form 1

(See Rule 4)

Form order requisitioning Land under Sub-section (1) of Section 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948.

Order No. Dated the

Whereas in my opinion it is necessary for the purpose of maintaining supplies and services essential to the life of the community providing proper facilities for transport/communication/irrigation/drainage viz. For staking yard at Serampore for construction of a Rad from Konnagar Rly. Stn. To Gobra Rly. Stn. Road, to requisition the land described in the Schedule below/overleaf.

And whereas State Government has by notification No. 20500 L.A. dated 3.12.63 published in the Calcutta Gazette Part-I of the 26th December, 1963 at page 2578 authorised me to exercise the power conferred by Sub-section (1A) of Section 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948 (West Bengal Act II of 1948).

Now therefore, in exercise of the power conferred by Sub-section (1A) of Section 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948 (West Bengal Act II of 1948) read with the authority so vested in me. as aforesaid I do hereby requisition the land mentioned in the Schedule below/overleaf and make the following further order namely:

1) that possession of the land will be taken on 29.1.77

at 1 p.m.; and

2) that the owner/occupier/tenant of the said land shall furnish me such information relating to the said land as will be necessary from time to time.

Schedule

Mouza Serampore J.L. No. 13 P.S. Serampore

Plot No. Specific Area in Plot No. Specific Area in

portion

acre

portion
acres.

352	Eastern	0.13
388	Eastern	0.32
389	Eastern	0.22

Sd/- R.K. Rakshit/12.1.77/Collector, Hooghly, Additional District Magistrate, Hooghly.

Memo No. L.A.

Office of the Collector of Hooghly

Dated, Chinsurah, the

Copy forwarded to name as per reverse all of De Street, Serampore Owner/tenant/occupier of the land described in the schedule to the above order.

Sd/- Illegible/18.1.77/Collector under West Bengal Act II of 1948 Hooghly.

3. After requisitioning the above premises notice u/s 4(1a) of the West Bengal Land (Requisition and Acquisition) Act, 1948 (West Bengal Act II of 1948) was issued for acquisition of land. The same was published in the Calcutta Gazette, Extra Ordinary on August 9, 1982. The said notification reads as under:

The Calcutta Gazette, Extra-ordinary, 9.8.2

Hooghly No. 8850 L.A. (P.W.)2R-124/81 30th July, 1982 Whereas 0.2711 of a hectare (0.67 of an acre) more or less, of land situated in or near the Village of Serampore, described below has been requisitioned under Sub-section (1) of Section 3 of West Bengal Land (Requisition and Acquisition) Act, 1948, by the person authorised u/s 3(1A) of the Act for the public purpose of providing facilities for transport and communication and for purposes connected therewith and incidental thereto, namely, for stackyard in connection with construction of link road from Konnagar R.S. to Gobra R.S. and for construction of office building of Serampore Highway Sub-Division. Now, therefore, notice is hereby given that in pursuance of Section 4 of the said Act, the Governor acquires such land being required for a public purpose as aforesaid.

This notice is given under the provisions of Sub-section (1a) of Section 4 of the West Bengal Land (Requisition and Acquisition) Act, 1948 (West Bengal Act II of 1948), to all whom it may concern".

A plan of the land may be inspected in the office of the Collector, Hooghly.

Description of the land

Mouza Serampore, jurisdiction list ho. 13, Police Station Serampore, District Hooghly

Revisional Survey plots in part

Plot No.	Specific portion of land	Area in	
			Acre-Hactare
352	Eastern	0.13 -	0.0526
388	Eastern	0.32 -	0.1295
389	Eastern	0.22 -	0.0890

By order of the Governor,

J. Dutta,

Dy. Secy. To the Govt, of West Bengal.

4. After taking possession of the property a massive building has been constructed on the said land by the P.W. D. (Roads). Initially the Petitioner challenged the aforesaid order of requisition in Company No. 8809(W) of 1982 in which no interim order was granted and the Petitioner had no deliver possession of the said land to the P.W. D. for construction of the said building. In the aforesaid writ petition an application was made in 1993 praying for a direction on the Respondents to pay the compensation as the writ Petitioner needed money for marriage expenses of his daughter. By order dated July 25, 1995 Justice Manas Nath Ray (as he then was) directed the Respondents to pay compensation within 10 weeks from the date in respect of the said lands in plot No. 352 and 389. But no order was passed in respect of plot No. 388 as a civil suit was pending in respect of the said land. The learned single Judge disposed of the writ application, excepting with regard to plot No. 388, directing the Respondents to pay compensation within 10 weeks by the order dated July 25, 1995. But the compensation was not paid. Meanwhile it is alleged that the suit with regard to plot No. 388 was also dismissed. It was alleged in the writ petition that the amount of compensation has been assessed and such amount was lying with the Collector, Hooghly, therefore, the writ Petitioner sought an appropriate direction upon the Collector to pay the compensation to the Petitioner for requisition of the land as well as for the acquisition of the said premises. This writ application was moved on January 5, 1999 before Justice N.K. Mitra (as he then was) and he was pleased to give direction for filing affidavits. But no affidavit was filed by the State/Then again on February 15, 1999 the writ Petitioner filed an application in the said writ petition seeking a direction upon the Respondents to assess the amount of compensation and to pay the same to the Petitioner for acquisition of the land or at least to pay a lump sum amount as an ad hoc compensation if the assessment of the same has not yet been completed. Thereafter direction was issued by Justice Mitra to produce all the records. Ultimately the Respondents produced the records to show that a sum of Rs. 44,709.00 had already been paid to the writ Petitioner. It was also admitted by the counsel appearing for the State that a sum of Rs. 65 lakhs has already been

assessed as compensation, but the sum of Rs. 8,70,260.40 is in the fund of the Collector for payment of such compensation. The matter was directed to appear on April 12, 1999. Meanwhile, direction was given to the Collector to pay the sum of Rs. 4 lakhs to the writ Petitioner. Ultimately on August 31, 1999 when the matter was taken up for hearing the Respondents paid a cheque for Rs. 20 lakhs to the writ Petitioner. The only explanation given by the State for such belated payment was lack of funds with the Collector for disbursement of compensation. An application was moved for modification contending that steps under Sub-section 9, 10 and 11 are yet to be taken and the award in respect thereof has not yet been declared. It was further submitted that the amount of compensation of Rs. 20 lakhs be not paid to the writ Petitioner but it be kept on the record. This application was rejected as mis-conceived. However, the cheque was given to the writ Petitioner. Thereafter an appeal was preferred against this order and the Division Bench also dismissed the appeal. Therefore, in this background the question which finally came for consideration before the Learned Single Judge was the reference date from which amount of compensation should be determined.

5. Brief facts which can be summarised is that plot Nos. 352, 388 and 389 measuring 0.67 acres in total were first requisitioned under Act II of 1984. Thereafter a notification u/s 4(1a) was published in the Calcutta Gazette on August 9, 1982. Even after 23 years of requisition and 18 years after the acquisition thereof the writ Petitioner has not been paid compensation although the amount of compensation was said to have been calculated at Rs. 65,64,863.00 and the same was sanctioned by the Secretary, Land & Land Reforms Department under the order dated November 9, 1998 as admitted by the Principal Secretary to the Government of West Bengal, Land and Land Reforms Department in his affidavit affirmed on September 28, 1998. No satisfactory explanation was given before the Learned Single Judge whether steps under Sub-section 5(1) and 5(3) of the Act II of 1948 was taken or not. However the Government has sanctioned a sum of Rs. 65,64,863.00 on November 8, 1998. The stand of the Collector, Hooghly was that steps under Sub-section 9, 10 and 11 of the Act II of 1948 not having been taken, no payment of compensation can be made without completing the process of acquisition. It is alleged that if the entire process of acquisition is permitted to be completed then the amount of compensation which is assessed at Rs. 65,64,863.00 would be less and the incumbent will not be entitled to the same amount. The amount of compensation will become much less as the same has to be calculated from the date of publication of the notification 4(1a) of the Act II of 1948 that is from August 9, 1982. Therefore, the question before us is that what should be the relevant date for determination of compensation. It was seriously urged by the Learned Counsel on behalf of the State, that the relevant date for determining the compensation shall be the date of issuance of the notification u/s 4(1a) of the Act II of 1948 and if that has to be taken as the relevant date then the calculations made by the Collector, Hooghly at Rs. 65,64,863.00 will be excess and it will reduce to a considerable extent. Therefore, the

question is what should be the relevant date for determination of compensation in the present appeal before us. According to the Learned Counsel for the State the relevant date in this connection should be August 9, 1982 when the notification u/s 4(1a) was issued. However, the learned Single Judge awarded the compensation from the date of amendment of Section 7A of the Act II of 1948. Therefore, the crucial question before us, in the facts and circumstances of this case, is what should be the date for the purpose of determining the compensation. In order to decide this question we have to go back to the history of legislation and find out that what should be the date for the purpose of determining the compensation.

6. West Bengal Land (Requisition and Acquisition) Act, 1948 was re-enacted by the West Bengal Land (Requisition and Acquisition) Re-enacting Act, 1977. By virtue of Section 3 of the Act II of 1948 land in question was requisitioned and then a notice u/s 4(1a) of the Act II of 1948 was issued. Section 4(1a) of the Act II of 1948 which is relevant for our purpose reads as under:

4. Acquisition of land- (1) Where any land has been requisitioned u/s 3, the State Government may use or deal with such land for any of the purposes referred to in Sub-section (1) of Section 3 as may appear to it to be expedient.

(1a) The State Government may acquire any land requisitioned u/s 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.

(2) 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, vest absolutely in the (State) Government free from all encumbrances and the period of requisition of such land shall end.

7. This Act II of 1948 was to expire on March 31, 1994 but it was further extended by the West Bengal Act XIV of 1994 and the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1994 came into force and it was published in the Calcutta Gazette (Extraordinary) on March 31, 1994 and the life of the Act was extended up to March 31, 1997. The relevant notification is reproduced as under:

West Bengal Act XIV of 1994

West Bengal Land (Requisition and Acquisition)

(Amendment) Act, 1994

(Passed by West Bengal Legislature)

(Assent of the President of India was first published in the Calcutta Gazette, Extraordinary, of the 31st March, 1994.)

An Act to amend the West Bengal Land (Requisition and Acquisition) Act, 1948 as re-enacted by the West Bengal Land (Requisition and Acquisition) Re-enacting Act,

1977.

Whereas it is expedient to amend the West Bengal Land (Requisition and Acquisition) Act, 1948 as re-enacted by the West Bengal Land (Requisition and Acquisition) Re-enacting Act, 1977, for the purposes and in the manner hereinafter appearing.

It is hereby enacted in the Forty-fifth Year of the Republic of India by the Legislature of West Bengal as follows:

1. This Act may be called the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1994.

2. In Sub-section (4) of Section 1 of the West Bengal Land (Requisition and Acquisition) Act, 1948 (hereinafter referred to as the principal Act) as re-enacted by the West Bengal Land (Requisition and Acquisition) Re-enacting Act, 1977, for the words, figures and letters "the 31st day of March, 1994" the words, figures and letters "31st day of March, 1997" shall be substituted.

3. Section 3 of the principal Act (hereinafter referred to as the said section) shall be omitted with effect from 1st day of April, 1994:

Provided that such omission shall not -

(a) affect the previous operation of the said section so omitted or anything duly done or suffered thereunder, or

(b) affect any right, privilege, obligation or liability acquired, accrued or incurred under the said section so omitted, or

(c) affect any inquiry, investigation, legal proceeding or remedy, in respect of any such right, privilege, obligation or liability as aforesaid.

And any such inquiry, investigation, legal proceeding or remedy may be instituted, continued or enforced as if the said section had not been so omitted.

Provided further that any reference to the said section in any other provision of the principal Act shall be construed as a reference to the said section as if the said section had not been omitted.

By order of the Governor,

S. Maitra, Special Officer & Ex-Officio, Jt. Secy. To the Govt, of West Bengal.

8. By virtue of this amendment Section 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948 was omitted but it was provided that omission of that section will not affect the previous operation of the said section so omitted or anything duly done or suffered thereunder or affect any right, privilege, obligation or liability acquired, accrued or incurred under the said section so omitted, or affect any inquiry, investigation, legal proceeding or remedy, in respect of any such right,

privilege, obligation or liability as aforesaid and if such inquiry, investigation, legal proceeding if instituted, continued or enforced as if the said section has not been omitted. As a result of this possession taken u/s 3 of the Principal Act stand saved. Thereafter a notice u/s 4(1a) was issued on August 9, 1982. Then another amendmont in the Act was brought about and the same was published in the Calcutta Gazette, Extraordinary on October 8, 1996. This amending Act was brought into effect with effect from April 1, 1994 and Section 7A was introduced in the West Bengal Land (Requisition and Acquisition) Act, 1948. The relevant notification reads as under:

West Bengal Act XXV of 1996

West Bengal ! and (Requisition and Acquisition)

(Amendment) Act, 1996

[Passed by West Bengal Legislature]

[Assent of the President of India was first published in the Calcutta Gazette, Extraordinary. of the 8th October, 1996.]

An Act to amend the West Bengal Land

(Requisition and Acquisition) Act, 1948 as re-enacted by the West Bengal Land (Requisition and Acquisition) Re-enacting Act, 1977.

Whereas it is expedient to amend the West Bengal Land (Requisition and Acquisition) Act, 1948 as re-enacted by the West Bengal Land (Requisition and Acquisition) Re-enacting Act, 1977, for the purposes and in the manner hereinafter appearing.

It is hereby enacted in the Forty-seventh Year of the Republic of India by the Legislature of West Bengal, as follows:

1. (1) This Act may be called the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1996.

(2) It shall be deemed to have come into force on the 1st day of April, 1994.

2. In Section 7 of the West Bengal Land (Requisition and Acquisition) Act, 1948 (hereinafter referred to as the principal Act) as re-enacted by the West Bengal Land (Requisition and Acquisition) Re-enacting Act, 1977--

(1) In Sub-section (1),--

(a) for the words, figures and brackets in Sub-section

(1) of Section 23, the words, figures, letter and brackets "in Sub-sections (1), (1A) and (2) of Section 23" shall be substituted, and

(b) the second proviso shall be omitted;

(2) in Clause (a) of Sub-section (2), for the words, figures and brackets "in Sub-section (2) of Section 23; the words, figures, letter and brackets "in Sub-section (1), (1A) and (2) of Section 23" shall be substituted.

3. After Section 7 of the principal Act, the following shall be inserted:

7A. 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 that 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. S. Maitra, /Special Officer & Ex-Officio/Jt. Secy. To the Govt, of West Bengal.

9. According to Section 7A, as reproduced above, 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 and if such award is not made within the period as aforesaid, the said notice shall lapse. It was further 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 "that" Act. There is also an explanation that 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. Therefore, the idea was that all those proceedings which have been prolonged should be brought to an end. This was with a view to put an end to the agony of the land holders whose land have been requisitioned or acquisitioned or assessment of compensation is pending for a long time, the period was prescribed within which the award should be made.. Thereafter another Amendment was brought about on May 2, 1997. This Amendment was published in the Calcutta Gazette, Extraordinary dated May 2, 1997, in which a major change was brought in Section 9 of the Land Acquisition Act, 1894 (hereinafter referred to as the principal Act). By this amendment two new sections, Section 3A and 3B were introduced in the principal Act. Two provisos were added to Sections 11 and 23 by this amendment. By this amendment a new section namely Section 54A was added in the principal Act. The Amendment dated May 2, 1997 reads as under:

West Bengal Act VII of 1997

Land Acquisition (West Bengal Amendment) Act, 1997

[Passed by West Bengal Legislature]

[Assent of the President of India was first published in the Calcutta Gazette, Extraordinary, of the 2nd May, 1997.]

An Act to amend the Land Acquisition Act, 1894, in its application to West Bengal.

Whereas it is expedient to amend the Land Acquisition Act, 1894, in its application to West Bengal, for the purposes and in the manner hereinafter appearing.

It is hereby enacted in the Forty-eighth Year of the Republic of India by the Legislature of West Bengal, as follows:

1.(1) This Act may be called the Land Acquisition (West Bengal Amendment) Act, 1997.

(2) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

2. The Land Acquisition Act, 1894 (hereinafter referred to as the principal Act), shall in its application to West Bengal, be amended for the purposes and in the manner hereinafter provided

3. In Section 9 of the principal Act, after Sub-section (3), the following Sub-sections shall be inserted:

(3A) 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 u/s 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 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 u/s 11 in respect of any such land, such land shall, upon such award, vest absolutely in the Government, free of 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 u/s 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 every 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 u/s 11 in respect of such land only for the purpose of payment of due compensation to the persons interested in such land where such land has, upon the Collector taking possession thereof, already vested absolutely in the Government free from all encumbrances.

4. In Section 11A of the principal Act, after the proviso, the following proviso shall be added:

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 issue of the public notice u/s 9.

5. To Sub-section (1A) of Section 23 of the principal Act, the following proviso shall be added:

Provided that in respect of the acquisition of the land referred to in Sub-section (3A), and Sub-section (3B), of Section 9, in addition to the market value of the land, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of taking possession of the land till the date of the award of the Collector.

6. After Section 54 of the principal Act, the following section shall be inserted:

54A. Save as otherwise provided in Sub-section (3A), and Sub-section (3B), of Section 9, the second proviso to Section 11A, and the proviso to Sub-section (1A) of Section 23, the provisions of this Act shall apply to the acquisition of the land referred to in Sub-section (3A), and Sub-section (3B), of Section 9 mutatis mutandis.

By order of the Governor / D. Paul / Principal Secretary (Ex-officio to Govt. & Secretary-in-Charge, Law Department.

10. Now in the background of this legal history, the journey of the West Bengal Land (Requisition and Acquisition) Act, 1948 came to and end after this Amendment when it merged with the principal Act, that is Land Acquisition Act, 1894. It provides that all actions which had been initiated under Act II of 1948 will now be take over by the Land Acquisition (West Bengal Amendment) Act, 1997. Therefore, we have to examine the question of compensation in the light of the legal history of this Act that whether the land holder is entitled to compensation at the rate provided u/s 7A of the Amending Act of 1996 (where the period was provided) or from the date of

issuance of notice u/s 4(1a) of the Act II of 1948 which has been saved by the amending Act of 1997.

11. The Learned Single Judge took the view that since the Act of 1996 has come into force where a period has been prescribed that is within one year, so far as the present case is concerned, and therefore proceedings should have lapsed after expiry of the period of one year that is in October, 1997. But land could not be restored back to the land holder because buildings have come into existence. Therefore, compensation may be paid at the rate prevalent in October, 1997. The Learned Single Judge relied on a judgment of a Learned Single Judge of this Court in the case of *Ideal Sunrise Properties Pvt. Ltd. and Anr. v. State of West Bengal and Ors.* [W.P. No. 23477 (w) 1997, decided on 10.11.98]. In that case the argument was that no award was made in terms of Section 7A of Act II of 1948 as amended by 1996 amending Act after issue of notice u/s 4(1a) of Act II of 1948 within the period prescribed. Therefore, the Learned Single Judge took the view that the proceeding stood lapsed and the Learned Single Judge further held that as no notice u/s 9 of the Principal Act has been issued, therefore, all the proceedings of acquisition stood abated. Learned Single Judge further held that since permanent construction has been made therefore in the public interest, compensation should be paid to the incumbent from the date of pronouncement of the judgment as "If the notification u/s 4(1a) of Act II of 1948 was issued and published on the date of judgment and accordingly directed" the Collector to determine the amount of compensation from the date of the judgment. Learned Single Judge directed that the amount of compensation should be determined after hearing the Petitioner and the petition was given liberty to file their statement of claim and the compensation was directed to be paid not later than two months from the date of filing of the statement of claim with interest to which the Petitioners are entitled to in terms of the provisions of the Principal Act. The Learned Single Judge further held that apart from compensation for acquisition of land, the Petitioners shall be entitled to damages for wrongful occupation of the land by the Respondent/State for such long time upon adjustment of the amount which had already been paid to the Petitioners. The Learned Single Judge further gave liberty to the Petitioners that if they are not satisfied with the amount of compensation paid to them, they may ask the Collector to make a reference in terms of Section 18 of the Land Acquisition Act, 1894. The Learned Single Judge further held that if during the aforementioned period the amount of compensation is not paid to the Petitioners, the Respondents shall handover possession of the land in question in their favour. We do not know whether this judgment has been challenged before higher Court or not.

12. Our attention was also invited to another Single Bench decision in the case of *Sabitri Devi and Ors. v. State of West Bengal and Ors.* 2002 (3) C.H.N. 108 wherein it was held that a notice issued u/s 4(1a) of the Act II of 1948 shall stand lapsed unless award is made within 3 years from the date of publication of the notice. It was observed:

Therefore, the imagination is to be made on the state of affairs as it stood on 31st March, 1997. In a case where the notice u/s 4(1a) stood lapsed on 31st March, 1997 the imagination cannot relate back to a date prior thereto. Thus, the imagination has to be confined on the situation as it stood on 31st March, 1997 and thus the legal fiction cannot lead us to imagine to revive a lapsed notice and to continue the revival after the enactment stood effaced and that too in respect of a temporary statute.

13. As against this the Learned Counsel for the Appellant/State has invited our attention to a Single Bench decision in the case of Samarendra Nath Paul and Ors. v. West Bengal Housing Coard 2000 (2) C.H.N. 771. By this judgment the Learned Single Judge has dismissed the writ petition and held that by virtue of legal fiction the proceeding continued which was initiated under the Act II of 1948 and is saved under the Land Acquisition Act, 1894. Therefore, in view of these conflicting judgments, we have to independently examine the question that what should be the date for determining the compensation.

14. For convenient disposal of this appeal we have already narrated the relevant facts and the laws which have been amended from time to time. Therefore, the question before us is what should be the crucial date for determination of compensation for acquisition of the present property. It is very unfortunate that the State has taken a very casual attitude after requisitioning and acquiring the property. They have not taken care to bring the proceeding to its logical conclusion and allowed to prolong the proceeding resulting in great hardship to the land holder and depriving the land holder from using his land. The Act of 1994 extended the life of Act II of 1948 but the Government after realising the agony of the people realised that this kind of proceeding should come to an end. Therefore, by the amending Act of 1996 Section 7A was introduced to Act II of 1948 where a period was prescribed for making the award. Our attention was invited to some inconsistency in proviso to Section 7A inserted by the 1996 Amendment. It is provided that 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 S. 4 and if such award is not made within the period as aforesaid, the said notice shall lapse. Then in proviso to Section 7A it was 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 "that" Act. The expression "that" here does not mean the Act of 1994, because if that is to be taken then the proviso will be totally unworkable because this Amending Act of 1996 has to come into effect from October 8, 1996 and the proceedings have to be completed within one year from that Act, that is the Act of 1994 and that will make this proviso redundant as the period of one year shall stand expired in 1995 from the Act of 1994. Therefore, the expression "that" here means the Amending Act of 1996 and the idea was that the

proceeding should come to an end where notice has been published within one year ? from the date of commencement of the Act of 1996 and that one year has to be counted from October 8, 1996, that is, it should be over by October 7, 1997 and if it is not over within October 7, 1997 then proceedings shall lapse on that count.

15. However, both the decisions of the Learned Single Judges in cases of Ideal Sunrise Properties Pvt. Ltd. and Anr. v. State of West Bengal and Ors. and Sabitri Devi and Ors. v. State of West Bengal and Ors. (Supra) have taken the view that since the authorities have failed to complete the proceeding within one year from the date of the amending Act of 1996, the proceedings lapsed and the incumbent is entitled to compensation as if the notification has been issued u/s 4(1a) of Act II of 1948 on the date of pronouncement of the judgment in the case of Ideal Sunrise Properties and in the case of Savitri Devi (1) from the date of notice u/s 9 and compensation should be determined on the basis thereof. In the present case the Learned Single Judge observed that compensation should be determined from the date of the Amending Act of 1996, i.e., from October, 1996.

16. After going through all these three single bench judgments we have to decide that what should be the correct date for determination of compensation. It is true that it is very harsh that proceedings have continued for a long time nonetheless we cannot loose sight of the effect of legislation. Keeping in view all the four single bench judgments we shall again review the legislative history of Act II of 1948 to come to conclusion as to what should be the correct date for determination of compensation. It is admitted fact that the land in question was requisitioned u/s 3 of Act II of 1948 and thereafter on August 9, 1982 notice u/s 4(1a) was issued. Thereafter, the Amending Act of 1994 came into force extending the life of Act II of 1948 upto March 31, 1997 and then the Amending Act of 1996 came into force and Section 7A was introduced to Act II of 1948. In Section 7A a period was prescribed within which award should be made. As far as the present case is concerned, the compensation should have been determined within a period of one year and failing which the proceeding would have lapsed. But before the proceeding could be lapsed in terms of Section 7A of the 1996 Amending Act; the Amending Act of 1997 came into force from May 2, 1997 and by virtue of Section 54A all the proceedings pending were deemed to have been pending under the Land Acquisition Act, 1894 (hereinafter referred to as the Act of 1894). By this Amending Act of 1997 Sub-section (3A) and (3B) were added to Section 9 of the Act of 1894. By this Amending Act of 1997 provisos were added to Section 11A and Section 23 and a new section, i.e., Section 54A was newly inserted. By virtue of Sub-Section 3A of Section 9 the Collector shall 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 u/s 3 of the Act II of 1948, 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. It was further provided that the date of

reference for the purpose of determining the value of such land shall be the date of the notice and it was further provided that award shall be made u/s 11 and upon such award land shall absolutely vest in the Government free from all encumbrances. Sub-Section 3B of Section 9 which is relevant for our purpose lays down that the Collector shall 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 u/s 3 of the Act of 1948, and notice for acquisition of such land has also been published under Sub-section (1a) of Section 4 of the Act of 1948, and, in every 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. The proviso further provided that the date of publication of notice under sub-a. (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. Therefore, if we revert back to the history of Act of 1948 it will clearly transpire that the effect of Section 7A in the present case will not have the effect of lapse of the proceeding. Section 7A provided a period of one year by virtue of the Amending Act of 1996 and if the authorities have not taken any action by October 7, 1997 perhaps then the result would have been followed and the proceeding would have lapsed. But before expiry of the period of one year another legislation came into force on May 2, 1997 whereby all the proceedings which were pending under Act II of 1948 were deemed to be proceedings under the Principal Act, i.e. Land Acquisition Act, 1894. By virtue of this Act of 1997, all the proceedings which were pending under earlier enactment stood transferred under this Act, i.e., Act of 1894 therefore all the proceedings now shall be deemed to be under the principal Act, that is Land Acquisition Act, 1894. It is true that if we take the view as was taken by the Learned Single Judges that by virtue of the Amending Act of 1996 the proceeding has come to an end, then their conclusion is correct and it is open to the discretion of the Court to award compensation from a particular date looking to the hardship to the parties but that would be possible only if we ignore the effect of the Amending Act of 1997. When the Legislature in their wisdom has passed the Amending Act of 1997 and inserted Section 54A in the Act of 1894 we cannot lose sight of that as in no uncertain terms it has expressed that all the proceedings under Act of 1948, as amended from time to time, shall be deemed to be under the Act of 1894, then the clear intendment of the Legislature is writ at large. Section 54A which was inserted in the Act of 1894 by the amending Act of 1997 makes it very clear. It may not be out of place to reproduce Section 54A, which will make the intention of the Legislature obvious. Section 54A reads:

54A. Save as otherwise provided in Sub-section (3A), and Sub-section (3B) of Section 9 the second proviso to Section 11A and the proviso to Sub-section (1A) of Section 23, the provisions of this Act shall apply to the acquisition of the land referred to in Sub-section (3A) and Sub-section (3B) of Section 9 mutatis mutandis.

17. In this connection reference may be made to a decision of the Apex Court in the case of [Nelson Motis Vs. Union of India and another](#), wherein their Lordships observed that when the words of a statute are clear, plain or unambiguous, i.e., they are reasonably susceptible to only one meaning, the Courts are bound to give effect to that meaning irrespective of consequences. It was observed:

... It is well established that if the words of a statute are clear and free from any vagueness and are, therefore, reasonably susceptible to only one meaning, it must be construed by giving effect to that meaning, irrespective of consequences ...

18. Similarly, Tindal, C.J. in *Sussex Peerage* (1844) 11 CI & F85 case held that "If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the lawgiver. Viscount Simonds, L.C. in the case of AIR 1945 48 (Privy Council) :

... Again and again, this Board has insisted that in construing enacted words we are not concerned with the policy involved or with the results, injurious or otherwise, which may follow from giving effect to the language used....

19. Similarly, Gajendragadkar, J. in the case of [Kanai Lal Sur Vs. Paramnidhi Sadhukhan](#), held:

... If the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act.

20. Therefore, on the face of the authorities cited above, we find that the intention of the Legislature are clear and unambiguous. It will be unfair to ignore the statutory provisions on the subject and lead away by emotion looking to the hardship caused to the Petitioner. Courts cannot ignore the impact of the legislation and lead away by emotion.

21. We make it clear that nobody has challenged the validity of the Amending Act of 1997 and the introduction of Sub-Section 3A and 3B in Section 9 of the principal Act i.e. the Land Acquisition Act, 1894. Therefore, so long as Sub-Section 3A and 3B of Section 9 and Section 54A of the Land Acquisition Act, 1894 are in force, Courts cannot ignore them and proceed to decide the matter on the basis of the enactment which has by implication stood repealed. Once the Amending Act of 1997 having come into force, before the expiry of the period prescribed by the Amending Act of 1996 in terms of Section 7A, the effect would be that all the proceedings pending under the earlier enactment stood repealed and the present enactment that is the Act of 1894 will hold the field that the question of determination of compensation will have to be decided in the light of the Act of 1894. Therefore, the view taken by the Learned Single Judge impugned in the present appeal cannot be sustained as

we cannot loose sight of the Amending Act of 1997. The reference date for the purpose of determination of compensation shall be from the date of issue of the notice u/s 4(1a) as required under Sub-Section 3B of the Act of 1894. This leaves no manner of doubt that the Legislature is fully aware about the state of affairs and enacted the Amending Act of 1997 in order to meet this state of affairs. The effect of such Amending Act cannot be lost sight of Perhaps the attention of the Learned Single Judge were not invited to Section 54A as introduced in the Principal Act of 1894 by the Amending Act of 1997.

22. As a result of the above discussion we are of the opinion that the reference date for compensation in the present proceeding shall be from the date when the notice u/s 4(1a), i.e. August 9, 1982 was issued and the authorities shall determine the amount of compensation with due notice to the Petitioner within a period of three months from the date of receipt of this order. It is alleged that the Collector determined the compensation at Rs. 65,64,863/- but subsequently it was withdrawn and no award was given. During the pendency of the proceeding before this Court, in terms of the order passed by Justice M.N. Roy (as he then was) an approximate sum of Rs. 25 lakhs have been paid, as informed by the Learned Counsel for the State. Be that as it may. first of all the authorities shall determine the amount of compensation payable to the Petitioner in accordance with law in the light of this judgment. After such determination if it is found that excess amount has been paid to the Petitioner then the Petitioner shall refund such excess amount along with interest at the rate of 12% per annum to the authorities. However, in the event after such adjustment it is found that the Petitioner is entitled to more compensation than received by him then the balance amount of compensation should be paid to the Petitioner along with interest at the rate of 12% per annum within a period of three months from the date of such determination. Liberty is granted to the Petitioner that if he is not satisfied with the amount of compensation paid to him, he may ask the Collector to make a reference in terms of Section 18 of the Land Acquisition Act, 1894. The appeal is allowed and the order passed by the Learned Single Judge is set aside. No order as to costs.

Later on / 10.10.02.

A prayer has been made on behalf of the Respondent for stay of operation of the judgment and order. Such prayer is considered and refused.

If urgent xerox certified copy of this judgment and order is applied for the same may be made available to the Learned Counsel for the parties upon compliance with all the formalities.

Jayanta Kumar Biswas, J.

I agree.