

HIGH COURT AT CALCUTTA**Bench: Partha Sarathi Chatterjee, J****Date of Decision: 01 December 2023**

WPA 16342 of 2022

Pabitra Kumar Dutta & Ors.**Vs.****The State of West Bengal & Ors.****Legislation:**

Land Development and Planning Act, 1948

Right to Fair Compensation and Transparency in Land Acquisition,
Rehabilitation & Resettlement Act, 2013**Subject:**

A writ petition seeking cancellation of compensation assessment for land acquired under the Act of 1948 and reassessment under the Act of 2013.

Headnotes:

Historical Land Acquisition Case – Incomplete Proceedings – Original land acquisition proceedings (case no. LD-5 of 1949-50) for 329.43 acres in Mouzas Natagarh, Sodepur, and Ghola under the Act of 1948, with the declared intent of resettling migrants, remained incomplete without award declaration. Petitioners, inheritors of the land, sought reassessment of compensation under the Act of 2013. [Paras 2-6]

Prolonged Litigation and Administrative Responses – Multiple writ petitions, appeals, and contempt petitions filed by the petitioners due to non-payment of compensation and failure to complete proceedings. Notably, W.P. no.

24050(W) of 2012 and subsequent appeals and contempt proceedings highlight the administrative inertia and non-compliance with court orders regarding compensation. [Paras 7-14]

Respondents' Defense – Legislation by Incorporation Argument – State contends that the Act of 1948 is a legislation by incorporation, not reference, implying that subsequent amendments to Act-I of 1894 (including Section 11A) do not apply to the Act of 1948. Asserts that proceedings have not lapsed and compensation was assessed correctly under Act of 1948. [Paras 15-23]

Court's Observation and Ruling – Lapse of Acquisition Proceedings – Court finds that the acquisition proceedings under the Act of 1948 have lapsed, aligning with the Supreme Court's decision in State of West Bengal & Ors. vs Aziman Bibi & Ors., which applied Section 11A of Act-I of 1894 to such cases. The court determines that no award was declared within the stipulated time, rendering the proceedings void. [Paras 30-41]

Order – Fresh Acquisition and Compensation Assessment – Directs the respondent to initiate fresh acquisition proceedings and determine compensation under the Act of 2013. Invalidates previous compensation assessments and orders expeditious compensation payment within eight months. [Paras 42-44]

Referred Cases:

State of West Bengal & Ors. vs Aziman Bibi & Ors. (2016) 15 SCC 710

Representing Advocates:

Petitioner: Mr. Debayan Bera, Mr. Sakti Prasad Chakrabarti

State: Mr. Chandi Charan De, Mr. Anirban Sarkar

Partha Sarathi Chatterjee, J:-

PROLOGUE:

1. By this writ petition, the petitioner prays for cancellation of assessment of compensation made in respect of 6.25 acres of land of Mouza- Natagarh, J.L.NO. 15, P.S.- Khardha (now, P.S.-Ghola), District- North 24 Parganas in Case no. LD-5 of 1949-50 in terms of the Land Development and Planning Act, 1948 (in short, the Act of 1948) and a direction upon the concerned respondents to make such assessment in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013 (in short, the Act of 2013).

PETITIONERS' CASE:

2. This case has a chequered history. However, the capsulated form of the facts as unfurled in the writ petition are that one Sujay Krishna and Bijoy Krishna Dutta happened to be recorded owners of the certain plots of land (as referred in paragraph-2 of the writ petition) appertaining to Mouza- Natagarh, J.L. no. 15, Sheet no. 4(Map), R.S. no. 109, P.S. –Ghola (formerly known as P.S.- Khardah) of the then District-24 Parganas, now North 24 Parganas (hereinafter referred to as the subject lands). By way of inheritance, the petitioner nos. 1 to 8 jointly became the owners of eight anna share (1/2 share) whereas the petitioner no. 9 inherited four anna share (1/4th share) and by way of testamentary disposition, the petitioner nos. 10 and 11 jointly became the owners of 1/4th share of the subject lands.
3. During 1948-49, the Refugee Rehabilitation Directorate, Government of West Bengal allowed umpteen numbers of refugees migrated from the then East Pakisthan (now, Bangladesh) to occupy the a large tract of lands comprising several plots of lands including the petitioners' lands situated in Mouzas namely, Natagarh, Sodepur and Ghola under the then P.S. –Khardah (now, P.S. Ghola) of the then District-24 Parganas(now, North 24 Parganas) without initiating any acquisition proceedings. Subsequent thereto, those lands were settled to the refugees.
4. In 1949, a land acquisition proceedings being case no. LD-5/1949-50 was initiated and in connection therewith a notification under Section 4 and a declaration under Section 6 of the Act of 1948 *vide*. Notification no. 3564L Dev dated 3rd April, 1950 were published in the Calcutta Gazette on 8th March, 1949 and 6th April, 1950 respectively. From the declaration dated 3rd April, 1950, it is explicit that an area of 329.43 acres comprising various plots of aforesaid three Mouzas including the subject lands were acquired. Another acquisition proceedings *vide*. case no. LD-46/1954-55 was also initiated to

acquire some lands and in connection with this case, a declaration under Section 6 of the Act of 1948 was published in the Calcutta Gazette on 29th March, 1955 but no award was declared.

5. On 17th September, 1976, by making a representation the predecessors-in-interest of the petitioner nos. 1 to 8 requested to the Refugee Rehabilitation Commissioner to pay the value of 10.91 acres of lands comprising of about 44 plots along with interest but in vain. Hence, the predecessors-in-interest of the petitioners were constrained to prefer a writ application being C.O. no. 8327(W) of 1989 which was disposed of by a coordinate Bench of this Court by an order dated 24.07.1989 directing the concerned respondents to pay compensation to the petitioners thereto, if not already paid, in accordance with law within a period of two months from the date of communication of the order.
6. In 1991, the Government of West Bengal through the Office of the Refugee Rehabilitation Commissioner granted Patta/Free Hole Title Deeds (in short, FHTD) to the occupiers/refugees in respect of the subject lands but those two proceedings being LD-5/1949-50 and LD-46/1954-55 had not been completed by declaring any award and no compensation had been paid in respect of the lands involved in the aforesaid two cases.
7. In such sequence of facts, the petitioners was forced to institute another writ petition being W.P. no. 24050(W) of 2012 with a prayer for quashing the proceedings being case nos. LD-5/1949-50 and LD-46/1954-55 and the declarations published in connection therewith with a further direction for payment of compensation in respect of those 44 plots of lands. The writ petition being W.P. no. 24050(W) of 2012 was disposed of by Ashoke Kumar Dasadhikari J. (as His Lordship then was) by an order dated 21.02.2013 directing the concerned respondents to dispose of the representation dated 23.12.2008 after affording an opportunity of hearing to the petitioners or their authorised representatives and pass a reasoned order within a period of eight weeks from the date of communication of the order and pay the compensation to the petitioners in the event it is found that their lands were acquired.
8. In compliance with the order dated 21.02.2013, a Misc. case no. 08 of 2013 was initiated and the same was disposed of by an order dated 22.10.2013. However, despite lapse of time stipulated in the order dated 21.02.2013, no compensation was paid to the petitioners. The petitioners were forced to take out a contempt petition being C.P.A. N 841 of 2014 which was disposed of by an order dated 19.09.2014 by granting liberty to the petitioners to challenge the order dated 22.10.2013 passed in Misc. Case no. 08 of 2013. Accordingly,

another writ petition being W.P. no. 33129(W) of 2014 was filed to assail the order dated 22.10.2013 and by an order dated 27.01.2015, the above writ petition was disposed of by directing the Refugee Rehabilitation Directorate, Government of West Bengal to send a proposal to the respondent no. 2 within four weeks from the date of communication of that order and upon receipt of such proposal, the respondent no. 2 was directed to dispose of the matter in accordance with law within ten weeks thereafter.

9. Again alleging wilful violation of the order dated 27.01.2015, another contempt petition being C.P.A. N. 560 of 2015 was preferred and during hearing, the alleged contemnors informed the Court that an appeal being M.A.T. no. 1955 of 2015 had been preferred by the West Bengal Land & Land Reforms Department to impugn the order the dated 27.01.2015 and an application for stay being CAN 3032 of 2016 was also preferred in connection with the appeal. It is noteworthy that subsequently, the contempt petition being C.P.A. N. 560 of 2015 was disposed of.

10. However, the appeal and the connected application were disposed of by the Hon'ble Division Bench of this Court presided over by the Hon'ble Justice Soumen Sen by an order dated 08.04.2019. In the order dated 08.04.2019 it was observed that *'it is partly correct that all the plots of which the claim for compensation has been made by the writ petitioners being annexure 'P-3' to the writ petition were not acquired by the said department'*. In view thereof, the order impugned in the appeal was modified to the extent that *'the claim and demand for payment of compensation of the petitioner shall be restricted to the plots of the petitioners covered by the order no. 12 dated 22nd October, 2013 only and not in respect of the other plots as mentioned in the annexure –'P-3' to the writ petition'*. The Refugee Rehabilitation Directorate, Government of West Bengal was directed to send a proposal to the Collector, North 24 Parganas within a period of two weeks from date and the State respondents were directed to dispose of the matter in accordance with law within eight weeks from date of receipt of such proposal.

11. Despite receipt of copy of the order dated 08.04.2019, the same had not been complied with and hence, a contempt petition being C.P.A.N. 880 of 2019 was taken out. On 13.09.2019 when the contempt petition was taken up for hearing by the Hon'ble Division Bench, the alleged contemnors produced a letter dated 12.09.2019 and submitted that the steps had been taken to implement the order dated 08.04.2019. From the letter dated 12.09.2019, it revealed that Sub-Divisional Officer, Barrackpore by his memo. dated

12.09.2019 had sent a supplementary land acquisition proposal for 21.97 acres of land of Mouza- Natagarh to L.A. Collector, North 24 Parganas.

- 12.** By a notice dated 09.12.2019, the Joint Secretary, L & LR and RR & R Department asked the petitioners of the contempt petition being C.P.A.N. 880 of 2019 to attend the office of the LRC and Principal Secretary of L & LR and RR & R Department on 10.12.2019. On that date, upon verification of the documents furnished on behalf of the petitioners, a notice was issued to them whereby an amount of Rs. 58,246.01 was tendered to the petitioners and the petitioners were directed to receive that amount on 04.02.2020 but the petitioners did not accept the compensation. Subsequently, they came to know that the competent authority made assessment of compensation of 6.25 acres of land of Mouza-Natagarh to the tune of Rs. 58,246.01/-.
- 13.** On 07.02.2020 when the contempt petition being C.P.A.N. 880 of 2019 was taken up for hearing when an affidavit of compliance was filed on behalf of alleged contemnors. In the affidavit of compliance, it was recorded that from the filed inspection held on 28.12.2019 and 31.12.2019, it was found that out of proposed 6.62 acres only 6.25 acres of land were utilized by Refugee Relief Department but the compensation was not paid and the rest 0.37 acres were out of Refugee Relief Colony, Natagarh. In connection with 6.25 acres of lands of Mouza- Natagrah, the acquisition proceedings was initiated but the same was completed up to the stage of publication of notification under Section 6 of the Act of 1948 and the decision was taken to pay compensation on the basis of the market value as on the date of notification along with solatium and additional interest.
- 14.** During course of hearing of the contempt petition, it was urged on behalf of the petitioners that the amount of compensation was assessed and tendered in lapsed proceedings and accordingly, a fresh proceedings was required to be initiated to determine the compensation but the Hon'ble Division Bench was pleased to dispose of the contempt petition by an order dated 07.02.2020 holding that the issue raised by the petitioner could not be decided within the four corners of the contempt application and it was clarified therein that the order passed in the contempt petition would not be construed to mean that the compensation paid to the petitioners had been accepted by the Court and the petitioners were granted liberty to take appropriate steps in accordance with law. Pursuant of the liberty given by the Hon'ble Division Bench in its order dated 07.02.2020, the present writ petition has been instituted.

RESPONDENTS' CASE:

- 15.** The defence taken by the respondents in the affidavit-in-opposition is that a notification under Section 4 of the Act of 1948 was published in Calcutta Gazette for acquisition of Several CS (Credstral Survey) Plots *vide*. LA case no. LD-5 of 1949-50 including the plots of lands referred in paragraph no. 2 of the writ petition being W.P. no. 16342 of 2022 except CS plot nos. 2959, 2722, 2869, 3092 of Mouza- Natagarh, J.L. No. 15, Panihati Municipality, District-14 Parganas, P.S.-Khardah (now, P.S.-Ghola) for the public purpose of resettlement of immigrants who had been migrated into the State of West Bengal and a notification under Section 6 of the Act of 1948 *vide*. no. 3564 L.Dev dated 03.04.1950 was also published in connection with the aforesaid case being case no. LD-5 of 1949-50.
- 16.** In compliance with the order dated 21.02.2013 passed in W.P. no. 24050(W) of 2012, a Misc. Case no. 08 of 2013 was initiated by the L.A. Collector, North 24 Parganas and the same was disposed of by an order dated 22.10.2013. From the order dated 22.10.2013, it transpires that CS plot nos. 1945, 2773, 2824, 2822 and 3092 were out of alignment of R.R. Colony and hence, those plots had not been acquired.
- 17.** Amongst the plots referred in the present writ petition, in respect of the CS plot numbers 2500, 2503, 2506, 2507, 2508, 2519, 2788, 2521,2522,2530, 2611, 2622, 2679, 2688,2637,2691,2696, 2722, 2724,2770, 2778, 2786,2734, 2797, 2806, 2825, 2829, 281, 2837 of Mouza- Natagarh, FHTDs had been issued by the R.R. Department to the occupiers and the notifications under Sections 4 and 6 of the Act of 1948 had been published but the award could not be declared for non-placement of funds at the relevant time and in his order dated 22.10.2013, the L.A. Collector, North 24 Parganas expressed the view that the acquisition proceedings in respect of the plots for which FHTDs were issued and the notifications under Sections 4 and 6 of the Act of 1948 might be completed under the Act of 1948.
- 18.** Pursuant to the liberty granted to the petitioner in CPAN 841 of 2014, the order dated 22.10.2013 passed in Misc. case no. 08 of 2013 was assailed in W.P. no. W.P.no. 24050(W) of 2013. By an order dated 27.01.2015 a writ petition being W.P. no. 33129(W) of 2014 was disposed of with a direction upon the Refugee, Relief and Rehabilitation Directorate, Government of West Bengal to send to a proposal to L.A. Collector, North 24 Parganas with a further direction upon L.A. Collector to dispose of the matter in accordance with law upon receipt of such proposal.
- 19.** The State of West Bengal preferred an appeal being MAT no. 1955 of 2015 which was disposed of by an order dated 08.04.2019 by passing an order that

the claim and demand for payment of compensation of the petitioners shall be restricted to the plots referred in the order no. 12 dated 22.10.2013 only and not in respect of the other plots as mentioned in annexure-p-3 of the writ petition and a direction was given upon the Refugee, Relief and Rehabilitation Directorate, Government of West Bengal to send to a proposal to L.A. Collector, North 24 Parganas.

20. As per provision of the Act of 1948, compensation was determined by L.A. Collector concerned for the utilized area within the refugee colony and the award was declared under the Act of 1948. The L.A. Collector issued notice *vide* memo. no. 2401/(4)/LA(N)/BST dated 28.01.2020 for payment to the petitioners fixing the date on 04.02.2020 for payment of award and the petitioners duly received such notice on 29.01.2020 but the petitioners did not attend the office of L.A. Collector to accept the compensation and hence, a cheque *vide* no. 282409 dated 05.02.2020 was drawn and deposited in the office of the learned Registrar General, High Court, Calcutta.

21. Section 8 of the Act of 1948 has only incorporated the Section 11 of the Land Acquisition Act -I of 1894 (in short, Act-I of 1894) and the provision of Section 11A of the Act I of 1894 shall not apply in the given case. The Section 8(2) of the Act of 1948 mandates that when the amount of compensation has been determined as per the Section 8(1) of the Act of 1948, the Collector shall make an award in accordance with the principles set out in the Section 11 of the Act I of 1894 and the amount referred to in Sub-section (2) of Section 23 of the Act I of 1894 shall also be included in the award.

22. When there is general reference in the Act in question to some earlier Act but there is no specific mention of the provisions of the former Act, then the latter Act is considered to be a legislation by reference and in such case, the amending laws of the former Act would normally become applicable to the later Act but in case of legislation by incorporation, when the provisions of an Act are specifically referred and incorporated in the later statute, then those provisions alone are applicable and the amending provisions of the former Act would not become part of the latter Act by principle of legislation of incorporation. Hence, by the principle of incorporation, the Section 11A of the Act I of 1894 would not apply to the Act of 1948 and only the provisions of Sections 11 and 23 of the Act I of 1894 shall be deemed to have been included in the Act of 1948.

23. The case initiated under the Act of 1948 has not been lapsed and as such the provisions of Act XXX of 2013 would not be applicable in the present case. By introduction of the Act of 2013, the Act I of 1894 has been repealed by

virtue of the provision of Section 114 of the Act of 2013 but the Act of 1948 is very much alive and the award declared in the given is valid.

CONTENTS OF AFFIDAVIT-IN-REPLYUSED BY THE

PETITIONERS:

24. While going to dispose of the Misc. Case no. 08 of 2013 by passing the order dated 22.10.2013, the L.A. Collector did not include the C.S. Plot nos. 1945,2773, 2824, 2822 and 3092 but all those plots were included in the notification published under Section 4 of the Act of 1948 and also in the declaration published under Section 6 of the Act of 1948 and hence, the observation made in the order dated 22.10.2013 that the acquisition proceedings for those plots for which FHTDs had been issued and notification and declaration had been published under Sections 4 and 6 of the Act of 1948 might be completed is erroneous.
25. The notification published under Sections 4 and 6 of the Act of 1948 cannot remain valid for indefinite period. By Amendment Act of 1984, various provisions of Act I of 1894 was amended and the Section 11A was inserted in Act I of 1894. As per provision of Section 8 of the Act of 1948, the Section 11A of Act I of 1894 should be read in the Act of 1948 and as per provision of Section 11A of Act-I of 1894, the case initiated under the Act of 1948 stood lapsed.
26. No award has been declared in respect of the case no. LD-5 of 1949-50 and the notice under Process no. 2491(4)/LA(N)/BST dated 28.01.2020 is not legally valid and the assessment of compensation in respect of 6.25 acres of lands basing upon the lapsed notification and declaration published under Sections 4 and 6 of the Act of 1948 is also bad in law.

ARGUMENTS ADVANCED ON BEHALF OF THE PETITIONERS:

27. Mr. Bera, learned advocate for the petitioners argues that Section 8 of the Act of 1948 empowers the State Government to acquire the lands after making a declaration under Section 6 of the Act of 1948. He submits that after publication of declaration, the provisions of the Act I of 1894 including the provisions of Sections 7 to 11A of Act I of 1894 shall, so far as may be, apply for the purpose of declaration of award and payment of compensation. He contends that in the given case, the notification under Section 4 of the Act of

1948 and the declaration under Section 6 of the Act of 1948 were published on 8th March, 1949 and 6th April, 1950 respectively in case no. LD-5 of 1949-50 but both the notifications stood lapsed by operation of law since no award was declared within two years from the commencement of Land Acquisition(Amendment) Act, 1984 which came into force on and from 24th September, 1984 and consequently, the case no. LD-5 of 1949-50 also stood lapsed.

28. According to Mr. Bera, a land acquisition proceedings cannot remain alive for century and the notification and declaration issued and/or published under Sections 4 and 6 of the Act of 1948 cannot remain alive for indefinite period. He asserts that by virtue of Section 11A of the Act I of 1894, the proceedings being the case no. LD-5 of 1949-50 had lapsed. The L.A. Collector has assessed compensation in a lapsed proceedings. In his view, the Act of 1948 is to be treated as a legislation by reference. To invigorate such submission, he places reliance upon the judgments delivered in case of *State of West Bengal & Ors. –vs- Aziman Bibi & Ors.*, reported in (2016) 15 SCC 710. He submits that a review petition and also a curative petition were filed in respect of the judgment of *State of West Bengal & Ors. –vs- Aziman Bibi & Ors.*(supra) but those two petitions have been dismissed by the Hon'ble Supreme Court. He produces the orders passed on review and curative petitions. It was further urged by Mr. Bera that the Act I of 1894 has been repealed with the promulgation of the Act of 2013 which came into operation w.e.f. 1.1.2014 and hence, on and from 1.1.2014, the provisions of the Act I of 1894 will not apply to the proceedings initiated under Act I of 1894 save and except the proceedings which saved under Section 24 of the Act of 2013. Consequently, the only course open to the respondents is to declare the award by initiating a fresh proceedings under the relevant provisions of the Act of 2013.

CONTENTIONS CANVASSED BY THE RESPONDENTS:

29. In response, Mr. De, learned advocate for the State drawing my attention to the contents of the paragraph nos. 15, 16 and 17 of the affidavit-inopposition strenuously contends that the Act of 1948 shall be deemed to be construed to a legislation by incorporation and only the provisions of Section 11 and 23 of the Act-I of 1894 shall be deemed to have been included in the Act of 1948. He asserts that amending provisions of Act-I of 1894 i.e. the Section 11A thereof shall never be incorporated in the Act of 1948. In his view, the acquisition proceedings cannot be claimed to have been lapsed. He contends

that the judgment of Aziman Bibi (supra) is distinguishable on facts. He further contends that the L.A. Collector has rightly assessed compensation according to market value prevailing on the date of publication of the notice under Section 4 of the Act of 1948 and there is no scope to revisit the issue.

OBSERVATIONS OF THE COURT:

30. Admittedly, for the settlement of the immigrants who had been migrated from the then East Pakistan (now, Bangladesh), the State of West Bengal decided to acquire a large tract of land. The acquisition proceedings came to be initiated with publication with a notification under Section 4 of the Act of 1948. The petitioner claims that such notification was published in the Calcutta Gazette on 8th March, 1949. The respondents did not deny such fact. However, a declaration under Section 6 of the Act of 1948 was published in the Calcutta Gazette on 6th April, 1950 whereby a large tract of lands measuring more or less, 329.43 acres of land of Mouza-Natagarh, Sodepur and Ghola were notified in connection with LA case no. LD-5 of 1949-50.

31. In the given case, there was a dispute regarding quantum of lands involved in the acquisition proceedings. Initially, by making a representation dated 17.09.1996 the predecessor-in-interest of the petitioner nos.1 to 8 claimed value of 10.91 acres of land comprising 44(forty-four) plots of MouzaNatagarh. Ultimately, in compliance with the order dated 21.02.2013 passed in W.P. no. 24050(W) of 2013, a Misc. Case no. 08 of 2013 was initiated by the L.A. Collector which was disposed of by passing an order vide. no. 12 dated 22.10.2013.

32. The appeal being MAT no. 1955 of 2015 was disposed of by an order dated 08.04.2019 holding that the claim and demand for payment of compensation of the petitioners shall be restricted to the plots of the petitioners covered by the Order no. 12 dated 22.10.2013. Such observation made in the order dated 08.04.2019 has not been assailed by the petitioners and consequently, the observation made in MAT no. 1955 of 2015 to the effect that *'the claim and demand for payment of compensation of the petitioners shall be restricted to the plots of the petitioners covered by the Order no. 12 dated 22.10.2013'* has attained its finality.

33. The next and the most pivotal question which requires determination is whether the LA case no. LD case no. 05 of 1949-50 stood lapsed.

- 34.** Before going to delve into contour of such controversy, it would be profitable to relook the order dated 22.10.2013 passed in Misc. Case no. 08 of 2013. In the order dated 22.10.2013, it was observed that from the joint inquiry it revealed that all the C.S. plots referred in the writ petition being W.P. no. 24050(W) of 2013 and in the petitions dated 19.04.2013, 06.08.2013 and 16.07.2013 were being used by different persons by constructing pucca/semi pucca structures except the C.S. plot nos. 2805 and 2821. The C.S.Plots which are lying out of alignment of R.R. Colony had not been acquired. The C.S.Plot nos. 2604, 2636 and 2637 had been included in the layout of R.R. Colony but had not been acquired. Some C.S. Plots were acquired and award had been declared and paid. The R.R. & R. Department had issued FHTDs to the occupiers but the acquisition had not been completed and on scrutiny of the LA cases, the notifications under Sections 4 and 6 under the Act of 1948 were published in respect of some plots of land but award had not been made. In the order dated 22.10.2013, it was suggested that the *'plots for which Sec.4 and Sec.6 vide. LDP Act, 1948 have been published Acquisition proceedings of those plots may be completed vide. LDP Act, 1948 and the rest plots if any may be acquired vide. Act-I, 1894 for which proposal should be submitted by R.R. Department'*.
- 35.** The memo. no. 190(3) /BKP/R dated 12.09.2019 issued by the SubDivisional Officer speaks that a supplementary land acquisition proposal for 21.97 acres of land of Mouza-Natarah was given to L.A. Collector. However, the Memo. no. 94/BKP.R dated 11.6.2019 issued by the Sub-Divisional Officer speaks that a confirmation was sought for to include certain C.S.plots comprising 6.62 acres of land of Mouza- Natarah in acquisition proposal.
- 36.** However, from the order dated 22.10.2013, it can be construed that the plots in respect of which the notifications under Section 4 and 6 of the Act of 1948 in connection with LA case no. LD-5 of 1949-50 were issued, award had not been declared.
- 37.** During the hearing of the present writ petition, Mr. Bera strenuously contends that in view of Section 8 of the Act of 1948, after declaration under Section 6 of the Act of 1948 is made, the provisions of Act-I of 1894 will apply and consequently, the amending provision being the Section 11A of Act-I of 1894 will also apply. Mr. De riposted such claim contending that it is a legislation by incorporation and not a legislation by reference. Consequently, only the Section 11 and 23 of Act-I of 1894 will be included and the amending provision namely, Section 11A will not apply.

38. Hence, the dispute centred on the question whether the provision of Section 11A of the Act –I of 1894 will apply in the acquisition proceedings initiated under the Act of 1948. It is condign to note that this issue is not *res integra*. In case of State of West Bengal & Ors. –vs- Aziman Bibi & Ors. (Supra), the acquisition proceedings were initiated under Section 4 of the Act of 1948. In the notification published under Section 6 of the Act of 1948, land of the respondent landowners was omitted. Subsequent thereto, errata was published in 1968 but the compensation had not been paid nor had it been determined though the competent authority took possession of the land in 1980 and even the land was utilized for public purpose. In such sequence of facts, the Hon'ble Supreme Court was pleased to hold that though the acquisition proceedings in the present case was initiated before insertion of S.11-A of the Act-I of 1894 in statute, the proviso to Section -11A would apply and the proviso to Section 11A permits the making of an award within two years from the date of into force of the Land Acquisition (Amendment) Act, 1984 i.e. from 24.09.1984 and hence, the award could have been made till

September, 1986, by latest and since, no such award had been made within September, 1986, the acquisition proceedings was declared to have lapsed and direction was given for notifying fresh acquisition proceedings.

39. In the case at hand, the acquisition proceedings was initiated under Section 4 of the Act of 1948 for public purpose and the declaration under Section 6 of the Act of 1948 was published in the Calcutta Gazette on 6th April, 1950 and the estimate (Annexure-p/17) postulates that possession of the lands were taken in 30.04.1965 and from the order dated 22.10.2013 passed in Misc. Case no. 08 of 2013 it is explicit that even in 2013, the award in respect of the lands for which notifications under Section 4 and the declaration under Section 6 were published, had not been made and hence, assessment of compensation was made in 2020.

40. The Section 8 of the Act of 1948 speaks about application of the Act-I of 1894 in the acquisition proceedings initiated under the Act of 1948 and Section 8(1) of the Act of 1948 lays down that after making a declaration under section 6 the State Government may acquire the land and thereupon the provisions of Land Acquisition Act, 1894 shall, so far as may be, apply and the Section 8(2) of the Act of 1948 says that when the amount of compensation has been determined under sub-section (1), the Collector shall make an award in accordance with the principles set out in section 11 of the said Act, [and the amount referred to in sub-section (2) of section 23 of the

said Act shall also be included in the award] whereas Section 11A of the Act –I of 1894 mandates that the Collector shall make an award under section 11 within a period of two years from the date of publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse; Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984 , the award shall be made within a period of two years from such commencement. Needless to observe that the Section 11A was inserted in the Act-I of 1894 by the Land Acquisition (Amendment) Act, 1984 w.e.f. 24.09.1984. Considering the factual matrix of both the cases and the provisions of the Act of 1948 and Act-I of 1894, I am of the considered view that the proposition laid down in the judgment of State of *West Bengal & Ors. –vs- Aziman Bibi & Ors.* (supra) squarely applies to the case at hand and as per the ratiocination of this judgment, the provision of Section 11A of the Act I of 1894 has been included in the Act of 1948.

41. In the given case, in view of S. 11A of the Act-I of 1894, the competent authority should have made award within September, 1986 by latest but admittedly, no such award has been made. Needless to mention that in view of S.114 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the Land Acquisition Act-I of 1894 stood repealed w.e.f. 1.1.2014.

CONCLUSION:

42. In such chronological events, there is an irresistible conclusion that the acquisition proceedings commencing with the publication of the notification under Section 4 and the declaration published under Section 6 of the Act of 1948 respectively being LA Case no. LD-5 of 1949-50 had lapsed. Since the petitioners' lands have been utilized, the respondents are to notify the acquisition afresh in accordance with the Act of 2013.

ORDER:

43. The assessment of compensation and/or the estimate (Annexure-P-17) and/or is set aside. The Acquisition proceedings initiated under the Act of 1948 being case no. LD-5 of 1949-50 had lapsed. The respondent no.2 is directed to take step for notifying the acquisition once again and determine the compensation in accordance with the relevant provisions of the Right to

Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act of 2013 and pay compensation to the persons interested expeditiously but not later than eight months from the date of receipt of a copy of this order. The respondents are at liberty to withdraw the amount, if any, deposited with the learned Registrar General, High Court, Calcutta along with the interest, if any, accrued thereon.

44. With these observations and order, the writ petition is being **WPA 16342 of 2022** stands **disposed of**, however, without any order as to the costs.

45. Parties shall be entitled to act on the basis of a server copy of this Judgement and Order placed on the official website of the Court.

46. Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

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