
(2016) 04 CAL CK 0085
In the Calcutta High Court
Case No : WP No. 496 of 2013

ABCI Infrastructure Pvt. Ltd.

APPELLANT

Vs

State of West Bengal & Ors.

RESPONDENT

Date of Decision : 22-04-2016

Acts Referred:

Land Acquisition Act, 1894 — Section 16, 4(1)

Citation : (2016) AIRCC 1841 : (2016) 2 CalLJ 470 : (2017) 1 WBLR 90

Hon'ble Judges : Arijit Banerjee, J.

Bench : Single Bench

Advocate : Mr. P.K. Das, Sr. Advocate, Mr. Amitava Pal, Mr. Somnath Ganguly and Mr. Ashoke Bhowmick, Advocates, for the Appellant; Mr. Sanatan Ganguly, Advocate, Mr. Biswajit Mukherjee, Mr. Gopal Ch. Das and Mr. Debangsu Mondal, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Arijit Banerjee, J.—In this writ application the petitioner prays for quashing of the land acquisition proceedings in LA Case No. 1-D-2/3 of 1965-66 and LA Case No. 1-D-2/4 of 1965-66.

Contention of the petitioner:-

2. In the year 2009 by six separate deed of conveyance, the then owners of the land being Premises No. 57 of 59 Palm Avenue, Calcutta 700019 was transferred to and in favour of the petitioner for valuable consideration. As such the petitioner became the owner of the said land. The petitioner got his name mutated in the records of the Calcutta Municipal Corporation and has been regularly paying the applicable taxes.

3. In February, 1963 an acquisition proceeding had been initiated by the Land Acquisition Collector, Calcutta, being the respondent no. 3 herein, in respect of the said land and by a notification bearing No. 2500A L A dated 15 February, 1963 was issued by the Collector under the Land Acquisition Act, 1894.

4. On 7 March, 1963 the said notification was published in the Calcutta Gazette Extraordinary and on 13 May, 1965 a declaration being No. 6594 L.A. was made which was published in the Calcutta Gazette, Part I, page 1574.

5. The acquiring authority claimed that the acquisition of the said land was intended for purported public purpose being a housing scheme for the low income group.

6. No valid or proper notice of the acquisition was ever served upon the owners or co-sharers or predecessors-in-interest thereof excepting some purported letters. On coming to know of the acquisition proceeding, objection petitions were filed before the concerned authority by raising disputes in respect of the valuation, apportionment and the bona fide of the acquisition.

7. By an order dated 24 January, 1969 the First Land Acquisition Collector passed an award overruling the objections. However, possession of the land in question was never taken by the respondents.

8. Till 1984, there was no progress with respect to the acquisition proceeding. In the year 1984, the then owners of the land made a representation before the Land Acquisition Collector and made a prayer for release of the said land from the purported acquisition proceedings. The respondent authorities refused to accede to such prayer.

9. Accordingly, a writ petition being Civil Rule No. 9691(W) of 1984 was moved before this court challenging the action of the State. During the pendency of the writ petition, an application was made for amendment of the writ petition to incorporate a claim that the joint award made covering the said land was improper, bad, illegal and arbitrary. In the writ petition it was contended, inter alia, that Section 11A of the Land Acquisition Act, 1894 had not been complied with inasmuch as the award was not made within two years from the date of publication of the declaration and as such the entire acquisition proceeding lapsed. It was further contended that the Land Acquisition Collector had failed and neglected to cause a public notice of the substance of the notification under Section 4 of the 1894 Act to be given at a convenient place in the locality where the premises under acquisition is situated, which is a mandatory requirement under the said Act and in the absence of which the entire proceeding becomes void. In the affidavit-in-opposition filed by the State Government it was admitted that possession of the said land had not been taken till that date by the authorities.

10. The said writ petition was disposed of by a judgment and order dated 18 May, 1990 wherein this Court in effect observed that each and every act and actions on the part of the respondent authorities was bad in law and the entire acquisition proceedings was illegal and invalid. It was further observed that the joint award should be declared illegal, void and inoperative. However, the writ petition was dismissed on the ground that the award could not be challenged in a writ proceeding and, in fact, the acquisition proceeding could not be challenged

as no valid award was passed in the matter.

11. The award made by the Land Acquisition Collector was not a proper one and not in accordance with law since the area of the land or the total compensation for the land has not been mentioned in the award and there is no apportionment in the award amongst the persons interested. In the absence of a valid award under Section 11A of the LA Act, 1894 within the time prescribed, the entire acquisition proceeding has lapsed.

12. The predecessor-in-interest of the petitioner subsequently came to know that the requiring body i.e. the Housing Department was desirous of dropping the land acquisition proceeding on the ground that though substantial amounts had been deposited with the Revenue Court towards compensation, the acquiring body did not take possession of the property and the cause of acquisition for the development of housing project for the low income group was no more there. Accordingly the Deputy Secretary, Housing Department (P & W) Branch, vide his letter No. 676-H-A/11/43/80 dated 19 September, 1991 requested the First Land Acquisition Collector to drop the acquisition proceeding in respect of the premises in question and to make refund of the amount deposited by the Housing Department towards payment of compensation.

13. In the year 1993 the Dy. Secretary, Housing Dept. sent a reminder dated 28 June, 1993 to the First Land Acquisition Collector requesting him to take suitable steps for refunding the amount deposited by the Housing Dept..

14. In view of the fact that the requiring authority was desirous of dropping the acquisition proceeding, the predecessor-in-interest of the petitioner filed WP No. 18753(W) of 1998 before this court praying for, inter alia, a direction upon the respondent authorities to rescind, cancel, withdraw and/or drop the land acquisition proceeding initiated in respect of the said premises. The petitioner contends that by reason of operation of the letters dated 19 September, 1991 and 28 June, 1993 written by the Dy. Secy., Housing Dept. the land of the petitioner stands released from acquisition proceeding and the said writ petition does not require to be proceeded with.

15. On 10 September, 2010 the legal heirs of the erstwhile owners of the said land wrote a letter to the Superintendent, Calcutta Land Acquisition Office being the respondent no. 4 herein for release of the said land and to confirm that the acquisition proceedings in respect of the said land had been dropped. In spite of receipt of the said letter the respondent no. 1 did not respond to the same.

16. It is contended that in spite of issuance of notice Under Section 12(2) of the LA Act, 1894 and fixation of date for taking possession of the property on 25 January, 1969, possession could not be taken in view of a Civil Rule No. 11345(W) of 1969 filed by one Raghubir Thakur & other awardees. Since, the possession has never been taken by the respondent authorities the purported awarded amount has been deposited in the court of Special LA Judge, Alipore and part of the money has been kept in the Revenue Department.

17. On 29 September, 2012, the petitioner made a detailed representation through its Ld. Advocate to the respondent no. 7 (Deputy Secretary, Housing Department) with a copy to the respondent No. 4 (The Superintendent, Calcutta Land Acquisition Office) and the Chief Engineer, Housing Directorate, Government of West Bengal, narrating the facts of the case and requesting him to take the matter with the LA Collector, Calcutta so that a letter dropping the land acquisition proceedings in respect of the land in question could be issued at an early date. There was no response to the said representation.

18. The petitioner contends that none of the provisions of the LA Act, 1894 has been observed or complied with by the State respondent. The time schedule fixed by the statute has been breached. No valid award has been made within the prescribed time. The said respondents have never taken possession of the land in question nor have taken any step in accordance with law for the acquisition of the concerned property. As such the acquisition proceeding has lapsed.

19. The petitioner submits that the acquisition proceeding has been artificially kept alive in the records of the respondent authorities as appears from the replies received to applications made under the Right To Information Act. More than 50 years have elapsed since the acquisition proceeding was initiated and the acquisition proceeding should be quashed for the following reasons:-

(i) There is no public purpose as per the definition given in the Land Acquisition Act, 1894.

(ii) The notification under Section 4 of the said Act is not in accordance with the provisions thereof and the law laid down by the Supreme Court. It has been laid down that the provisions of Sections 4 and 6 of the said Act must be strictly construed and all the three modes of publication specified under Sections 4(1) and 6(2) of the Act must be complied with and none of them can be waived. Since Sections 4 and 6 of the said Act have not been complied with the entire acquisition proceeding must fail.

(iii) Section 16 of the LA Act, 1894 provides, inter alia, that when the Collector has made an award under Section 11 he will take possession of the land and then the land will vest absolutely with the State free from all encumbrances. However until possession of the land has been taken, the land does not vest in the Government. In this connection reliance has been placed on a decision of this court in the case of Jagabandhu Roychoudhury v. Light House for Blind, ILR 1972 (2) Cal 226.

(iv) Even under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short "The 2013 Act") the acquisition proceeding shall be deemed to have lapsed since the award was purportedly made more than 5 years prior to commencement of the 2013 Act but possession of the land has not been taken nor compensation has been paid.

20. The following decisions have been relied upon by Ld. Sr. Counsel for the petitioner in support of the contention that the provisions contained in Sections 4 and 6 of the 1894 Act are mandatory and noncompliance therewith would be fatal to the entire acquisition proceeding.

(i) Khub Chand v. State of Rajasthan, (1967) 1 SCR 120.

(ii) M/s. V.K.M. Kattha Industries Pvt. Ltd. v. State of Haryana & Ors, AIR 2013 SC 3557.

(iii) Ashok Kumar & Ors. v. State of Haryana & Anr., AIR 2007 SC 1411.

(iv) Kunwar Pal Singh (Dead) by LRS. v. State of UP & Ors., (2007) 5 SCC 85.

21. The following decisions have been relied upon by Mr. Das, Ld. Sr. Counsel in support of his contention that the acquisition proceeding is deemed to have lapsed under Section 24(2) of the 2013 Act.

(i) Magnum Promoters Pvt. Ltd. v. Union of India & Ors., (2015) 3 SCC 327.

(ii) Rajiv Chowdhrie Huf v. Union of India & Ors., (2015) 3 SCC 541.

(iii) Sree Balaji Nagar Residential Association v. State of Tamil Nadu & Ors. (2015) 3 SCC 353.

(iv) Sharma Agro Industries v. State of Haryana, (2015) 3 SCC 341.

(v) Union of India & Ors. v. Shiv Raj & Ors., AIR 2014 SC 2242.

22. On the basis of the aforesaid submissions, Ld. Sr. Counsel for the petitioner prayed for quashing of the acquisition proceeding in respect of the land in question.

Contention of the Land Acquisition Collector:-

23. Appearing on behalf of the Land Acquisition Collector, Mr. Ganguly, Ld. Counsel submitted that the award in respect of premises No. 57 of 59 Palm Avenue measuring an area of 2 bighas 5 cottas 5 chittacks and 43 sq. ft. was made on 15 January, 1969, for a total sum of Rs. 1,98,814.37, out of which an amount of Rs. 1,95,391.87 was remitted to the Court of the Special Land Acquisition Judge, Alipore on 18 September, 1969. Hence, the entire land in question stands absolutely vested in the State of West Bengal.

24. Ld. Counsel submitted that the purported purchase of the land in question by the petitioner could not have conferred any right, title or interest on the petitioner since the same was done long after declaration of the award. The land in question was acquired in the year 1965-66 and the transfer of the said land by the erstwhile landlord in the year 2009 cannot be treated as a valid transfer.

25. Ld. Counsel then submitted that there were no irregularities in the acquisition proceeding and everything was done in accordance with law. Notices were duly served upon the materially interested parties as per the provisions of the LA Act,

1894. The owner of the premises no. 57 and 59, Palm Avenue, Calcutta filed registered documents and some other papers in respect of their claim. As there were conflicting claims which gave rise to a title dispute, it was not possible to resolve the same within the limited scope of land acquisition proceedings and it was entirely a matter to be solved by the contesting parties in a litigation before the Civil Court.

26. It was further submitted that in spite of several attempts, possession of the land in question could not be taken mainly due to litigation and obstruction from unauthorised occupiers.

27. Ld. Counsel then submitted that as per the Land Acquisition Act, 1984 there is no provision to release the land or drop the acquisition proceeding since the award was declared on 15 January, 1969 and the amount was remitted to the Court of the Special Land Acquisition Judge, Alipore.

28. On the basis of the aforesaid submission, Ld. Counsel prayed for dismissal of the writ petition.

Contention of the KMC:-

29. Mr. Mukherjee, Ld. Counsel for the Corporation fairly submitted that he has nothing to say in the matter. He submitted that it was not necessary to implead the Corporation as a party respondent as no action of the Corporation is under challenge. He merely drew this Court's attention to an order dated 23 June, 2009 passed by the Chief Manager (Revenue) of the Calcutta Municipal Corporation in connection with the premises in question (page 118 of the writ petition). The said order, in my opinion, has no bearing on the issues involved in the present case.

Court's View:-

30. I have considered the rival contentions of the parties. In my view, two questions fall for determination in the present proceeding, i.e., (i) Whether the writ petitioner has sufficient right, title or interest in respect of the land in question to maintain the writ application? (ii) Whether or not the proceeding for acquisition of the land in question that was initiated in the year 1963 still survives?

31. Taking the question of locus standi of the writ petitioner first, it is not in dispute that the petitioner company purchased the premises in question from the owners thereof in the year 2009 and six separate registered deeds of conveyance were executed in its favour by the owners. The petitioner obtained mutation of the premises in question in its name and the Calcutta Municipal Corporation issued the mutation certificate in its name on 9 September, 2009.

32. The contesting respondents do not dispute that the said land was purchased by the petitioner. Their stand is that upon declaration of the award in the year 1969 and upon an amount of Rs. 1,95,391.87 being remitted to the court of

Special Land Acquisition Judge, Alipore as Civil deposit on 18 September, 1969, the said land vested absolutely in the State of West Bengal. Consequently, according to them, the purported transfer of the said land in favour of the petitioner in the year 2009 was invalid and not in accordance with law.

The aforesaid contention of the respondents has absolutely no basis. A plot of land which is the subject matter of acquisition, does not vest in the State until the Collector takes actual physical possession of the land. Section 16 of the Land Acquisition Act, 1894 provides as follows:-

"S 16. When the Collector has made an award under Section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances."

Thus, only possession of the land in question is taken by the Collector, the same does not vest in the Government and the owner of the land is not divested of the property in such land. In this connection one may refer to the decision of this Court in the case of Jagabandhu Roychoudhury v. Ligh House for Blind (*supra*). In the instant case, the respondents unequivocally admitted that possession of the land in question could not be taken due to pendency of litigations and obstruction from encroachers. Whatever be the reason, possession of the land in question as on the date of transfer of the land to and in favour of the writ petitioner, was with the vendors and they were the owners of the land. Hence, the vendors validly transferred the right, title and interest in respect of the land in favour of the writ petitioner.

In view of the aforesaid, the writ petitioner clearly has locus standi to maintain the writ petition. Accordingly, the first issue is answered in favour of the writ petitioner.

33. Coming to the second issue, the notification under Section 4 of the Land Acquisition Act was published in the Calcutta Gazette Extraordinary on March, 1963. It is also not in dispute that a declaration under Section 6 of the 1894 Act was published in the Calcutta Gazette on 13 May, 1965. It is also an admitted fact that on 24 January, 1969, the First Land Acquisition Collector passed an award. The petitioner contends that the said award was not an award as contemplated under Section 11(1) of the LA Act. 1894. Section 11(1) requires the Collector to make an award of the true area of the land in question, the compensation which in his opinion should be allowed for the land and the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him. It is the specific case of the petitioner that the award made by the Collector was not a lawful award since area of the land or the total compensation for the land or the apportionment of the compensation amount amongst the persons interested is not mentioned in the award. Since no award in accordance with law was ever made by the Collector, the acquisition proceeding has lapsed and the same

should be quashed, contends the petitioner.

34. I find considerable force in the aforesaid submission made on behalf of the petitioner. The provision of the LA Act, 1894, in my opinion, should be strictly construed. It is an enactment which permits the State to assume ownership of any land from its owner by divesting the owner of the property in such land, albeit, against monetary compensation. Such a statute should be strictly construed against the State and the State must act strictly in accordance with the provisions of the statute. Section 11(1) clearly imposes an obligation on the Collector to mention in the award the true area of the land, the compensation which should be allowed according to him, and how such compensation should be apportioned amongst the interested persons. In the affidavit-in-opposition filed by the respondent no. 2, there is no denial of the specific case of the petitioner that the aforesaid particulars are conspicuous by their absence in the award. There is only a general denial of the allegation that the award is not in accordance with the law for the reason aforesaid and a bare statement that the award was lawfully made. Unfortunately, neither of the parties has brought on record copy of the said award. In my opinion, to refute the specific allegation of the petitioner, the Collector should have disclosed a copy of the award.

35. Hence, it appears to me that the award made by the Collector in 1969 was not a valid or lawful award. Under Section 11A of the LA Act, 1894, the Collector was obliged to make an award under Section 11 within two years from the commencement of the Land Acquisition (Amendment) Act 1984, the declaration having been published prior to the commencement of the said 1984 Act, failing which the entire proceeding for the acquisition of the land shall lapse. It is nobody's case that apart from the 1969 award any other award was made by the Collector. Hence it appears that no valid award in compliance with the provisions of Section 11 of the 1894 Act was ever made by the Collector. Consequently, it must be held that the acquisition proceedings lapsed upon the expiry of two years from the commencement of the Land Acquisition (Amendment) Act, 1984.

36. In this connection I should refer to the judgment and order dated 18 May, 1990 passed by a Learned Judge of this Court in Civil Rule No. 9681 (W) of 1984 (Dr. Bhawani Prasad Dasgupta & Ors. v. State of West Bengal & Ors.). In the said writ application the very same acquisition proceeding which is the subject-matter of challenge in the present writ application was under challenged. The contentions of the writ petitioners were, firstly, that the award passed by the First Land Acquisition Collector was not a valid award, and secondly, the initial public purpose for which the acquisition proceeding was started, was not pursued and any other public purpose was not declared by the Government. Mohitosh Majumdar, J. as His Lordship then was, categorically held that the award should be declared illegal, void and inoperative. It was further held that diversion of purpose from the original purpose as stated in the declaration was prima facie not proper, justified and valid. The Ld. Judge held that the entire proceeding of

the case cannot but be treated as lapsed. Despite the said findings, the court dismissed the writ application on the ground that an award, if not challenged in regular proceedings as provided in law, cannot be challenged in writ proceedings.

37. Even if I were to give the benefit of doubt to the respondents on the aforesaid point since copy of the award is not on record, there are at least two more grounds, which go the root of the matter on which this writ application should succeed. Section 4(1) of the 1894 Act provides as follows:-

"S. 4(1) Whenever it appears to the (appropriate Government) that land in any locality (is needs or) is likely to be needed for any public purpose (or for a company) a notification to that effect shall be published in the Official Gazette (and in two daily newspapers circulating in that locality of which at least one shall be in the regional language), and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice being hereinafter referred to as the date of the publication of the notification)."

Thus, the said Section stipulates three different modes of publication of the notification under Section 4(1). Firstly, the notification should be published in the Official Gazette. Secondly, it shall be published in two daily newspapers which have circulation in the locality where the land in question is situated and at least one of such newspaper publications shall be in the regional language. Thirdly, the Collector is required to cause public notice of the substance of the notification to be given at convenient places in the concerned locality. Ld. Counsel for the petitioner contended that all the three modes of publication of the notice must be complied with and failure to follow even one mode of publication shall render the notice invalid and non-est in the eye of law. His specific case is that such public notice of substance of the notification at convenient places in the concerned locality was not given by the Collector which renders the entire acquisition proceeding bad in law and liable to be set aside.

38. In this connection the following decisions of the Hon"ble Supreme Court may be noted.

(i) In *Khub Chand v. State of Rajasthan* (supra), the Hon"ble Supreme Court held that Section 4(1) requires that the Collector shall cause public notice of the substance of the notification to be given at convenient places in the locality concerned. If the word "shall" is construed as "may", the object of the sub-Section will be defeated. The object is to give intimation to the person whose land is sought to be acquired of the intention of the officer to enter the land.

(ii) In *V.K.M. Kattha Industeis Pvt. Ltd. v. State of Haryana & Ors.*(supra) the Hon"ble Supreme Court held that the purpose of publication of notification under Section 4(1) of the LA Act, 1894 is two-fold; firstly to ensure that adequate publicity is given so that land owners and persons interested will have an opportunity to file their objections under Section 5A of the Act; and second to

give the land owners/occupiers a notice that it shall be lawful for any officer authorised by the Government to carry out the activities enumerated in Section 4(2) of the Act. Ld. Counsel for the land owner/company argued that in the light of the language used in Section 4(1) of the Act all the three modes of publication mentioned therein are mandatory. The Hon"ble Supreme Court found on facts that the notification was not published at the conspicuous places of the locality concerned which is one of the modes of publication mentioned in Section 4(1). Accordingly, the acquisition proceeding was quashed.

(iii) In *Kunwar Pal Singh (Deal) by LRS v. State of U.P.* (supra), the Hon"ble Apex Court at paragraph 16 of the judgment held as follows:-

"16. Section 6(2), on a plain reading, deals with the various modes of publication and they are: (a) publication in the Official Gazette, (b) publication in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language and (c) causing public notice of the substance of such declaration to be given at convenient places in the said locality. There is no option left with anyone to give up or waive any mode and all such modes have to be strictly resorted to. The principle is well settled that where any statutory provision provides a particular manner for doing a particular act, then, that thing or act must be done in accordance with the manner prescribed therefor in the Act."

39. In view of the aforesaid decisions of the Hon"ble Apex Court the law is settled that failure to follow any one of the modes of publication of a notice under Section 4(1) or a declaration under Section 6(1) will vitiate the entire acquisition proceeding. In the present case, there is only a bare denial by the respondents of the petitioner's allegation that the three modes of publication of the notice under Section 4(1) of the 1894 Act was not complied with. In view of such a serious allegation which goes to the root of the matter, in my view, it was incumbent on the respondents to bring on record materials to refute the said allegation of the petitioner. However, nothing in support of the respondent's denial has been disclosed. Accordingly, I am inclined to accept the petitioner's contention that the public notice of the substance of the Section 4(1) notification was not given by the Collector in the concerned locality. Consequently, I am impelled to hold that the entire acquisition proceeding stands vitiated and is liable to be set aside.

40. The second and even more fundamental point is whether the acquisition proceeding at all survives.

41. Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 provides as follows:-

"S. 24(2):-Notwithstanding anything contained in sub-Section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the

land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

42. In this Connection the following decisions of the Hon''ble Apex Court may be noted.

(i) In Union of India v. Shiv Raj (supra) The Hon''ble Apex Court gave effect to Section 24(2) of the 2013 Act in view of the fact that possession of the land in question had not been taken for more than 5 years after making of the award. The Hon''ble Supreme Court further observed that though compensation had been deposited with the Revenue Department, the same could not be termed as "deemed payment" .

(ii) In Magnum Promoters Pvt. Ltd. v. Union of India (supra), while discussing Section 24(2) of the 2013 Act, the Hon''ble Supreme Court observed that taking over physical possession of the acquired land means the actual taking possession of it from the land owners/interested persons.

(iii) In Sree Balaji Nagar Residential Association v. State of Tamil Nadu (supra), in Rajiv Chowdhrie Huf v. Union of India (supra), and in Sharma Agro Industries v. State of Haryana (supra), the Hon''ble Apex Court held that from a plain reading of Section 24 of the 2013 Act, it is clear that Section 24(2) of the Act does not exclude any period during which the land acquisition proceeding might have remained stayed on account of stay or injunction granted by any court. In the same Act, the proviso to Section 19(7) in the context of limitation for publication of declaration under Section 19(1) and the Explanation to Section 69(2) for working out the market value of the land in the context of delay between preliminary notification under Section 11 and the date of the award, specifically provide that the period or periods during which the acquisition proceedings were held up on account of any stay or injunction by the order of any court be excluded in computing the relevant period. In that view of the matter, it can be safely concluded that the legislature has consciously omitted to extend the period of five-years enacted in Section 24(2) even if the proceedings had been delayed on account of an order of stay or injunction granted by a court of law or for any reason.

(iv) In Radiance Fincap Pvt. Ltd. v. Union of India (supra), the Hon''ble Supreme Court at paragraph 11 of the judgment observed as follows:-

"11. All of these appeals were admitted before the commencement of the Right

to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. After commencement thereof, the appellants changed the tack of their challenge?originally framed under the Land Acquisition Act, 1894?and impugned the acquisition proceedings in to, by evoking the deemed lapse of proceedings under Section 24(2) of the 2013 Act. Any determination under this provision must proceed sequentially. First, the factum of an award under Section 11 of the Land Acquisition Act, 1894, must be clearly established. The said award must predate the commencement of the Act i.e. 1.1.2014, by at least five years (or more) i.e. the award must have been passed on or before 1.1.2009. This having been established, if possession is found to not have been taken, or compensation not paid, then proceedings shall be deemed to have lapsed. Thereafter, the appropriate Government, if it so chooses, may re-initiate acquisition proceedings in respect of the same land, but under the 2013 Act's regime."

43. Even assuming that the award in question is a valid award, it is an admitted fact that the same was made in 1969 i.e. much more than five years prior to commencement of the 2013 Act. It is also an admitted fact that the physical possession of the land in question has not been taken nor the compensation has been paid to the owner of the land. In his affidavit affirmed on 22 July, 2013 the respondent no. 2 categorically states that possession of the subject land could not be taken owing to litigation and obstruction from unauthorised occupiers. It is also the case of the respondents that the compensation amount is lying with the Special Land Acquisition Judge, Alipore as Civil Deposit i.e. the money has not been paid to the owner of the land in question. Hence, on the two-fold grounds of not taking the possession of land and non-payment of compensation, the acquisition proceeding in question must be deemed to have lapsed. Depositing the money with the court cannot be termed as deemed payment and taking over the physical possession of the acquired land means actually taking possession, as held by the Hon''ble Supreme Court in the cases of Shiv Raj (supra) and Magnum Promoters Pvt. Ltd. (supra).

44. The contention of the respondents that there is no provision in the 1894 Act for releasing the land in question from acquisition is misconceived since acquisition of the land in question was never completed. As discussed above, the land never vested in the State. Hence, the question of releasing the land from acquisition does not arise.

45. For the reasons aforesaid, I hold that the acquisition proceeding under challenge is bad and invalid by reason of non-compliance with the three modes of publication of the notice under Section 4(1) of the LA Act, 1894 and is liable to be quashed or set aside. In any event, the acquisition proceeding is deemed to have lapsed by operation of law under Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Accordingly, the acquisition proceeding is set aside and/or quashed. This will, however, not prevent the State Government from initiating

fresh proceedings for acquisition of the land in question in accordance with law.

46. In the premises, this writ application succeeds and is allowed. There will, however, be no order as to costs.

47. Urgent certified Photostat copy of this judgment, if applied for, be given to the parties upon compliance of necessary formalities.