

**(2012) 04 CAL CK 0079**  
**In the Calcutta High Court**  
**Case No : Writ Petition No. 12687 (W) of 2008**

Amitava Kanjilal

APPELLANT

Vs

State of West Bengal

RESPONDENT

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**Date of Decision :** 19-04-2012

**Acts Referred:**

Land Acquisition Act, 1894 — Section 4(1), 5, 5A, 6, 7  
West Bengal Land (Requisition and Acquisition) Act, 1948 — Section 11, 3, 3(1), 4, 4(1A)

**Citation :** (2012) 3 CHN 193

**Hon'ble Judges :** Joymalya Bagchi, J

**Bench :** Single Bench

**Advocate :** Manoj Kumar Roy, Sandip Das and Biswajit Sardar, for the Appellant; Soumen Dasgupta, Naren Ghosh Dastidar and Susovan Sengupta for the Municipality, for the Respondent

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## Judgement

Joymalya Bagchi, J.—The writ petitioner has filed the instant writ-petition, inter alia, praying for a writ of Mandamus directing the respondent No. 2 to issue fresh notice and award compensation in favour of the petitioner under the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as the Act I of 1894) in respect of certain lands allegedly utilized by the State for public purpose without lawfully acquiring the same and awarding compensation in respect thereof in accordance with law. The short factual compass giving rise to the instant case is as follows :

For the purpose of maintaining supplies and services essential to the life of the community and for providing proper facilities for transport/communication for better living condition, the State proposed to construct a link road from Sarishahat to Surarhat Via Bhaduria to Nainan Ferry Ghat (VR) in the district of the then undivided 24-Parganas (presently South 24-Parganas). For such public purpose, the respondent No. 2 issued notice u/s 3(1) of the West Bengal Land (Requisition and Acquisition) Act, 1948 (hereinafter referred to as the Act II of 1948) and initiated Land Acquisition case No. 11717(A) of 1976-1977 for

requisitioning lands comprised in plot Nos. 67, 70, 138 and 151 of Mouza Bhawkul, Police Station Diamondharbour, measuring 29, 11, 93 and 77 decimals respectively. Such notice was issued by respondent No. 2 on 06.09.1977 directing K.G.O. Surveyor to take possession of the aforesaid land.

2. Pursuant to such notice possession of the said land was taken by respondent No. 2 and handed over to the requiring body. Such land so requisitioned was permanently utilized for building the aforesaid link road. However, no notice of acquisition of the said land u/s 4(1A) of Act II of 1948 was published and no compensation was awarded with regard to such permanent utilization of land for public purpose by the State.

3. Subsequently, the respondent No. 2 for the purpose of constructing another link road issued another notice u/s 3(1) of Act II of 1948 and requisitioned lands comprised in plot Nos. 67, 70, 141 and 151 of Mouza -Bhawkul, Police Station - Diamond Harbour, District - South 24 Parganas measuring about 8, 2, 1 and 30 decimals respectively and initiated Land Acquisition Case No. LA 11/25 E of 1984 85 in respect of the said land. Such notice was issued by the respondent No. 2 on 22.12.1988 directing K.G.O. Surveyor to take steps for possession of the said land.

4. Pursuant to such direction, the Surveyor took possession of the said lands on 15.02.1989. The said land was also permanently utilized for constructing the aforesaid link road. However, similarly no notice was published u/s 4(1A) of Act II of 1948 and consequently no compensation was awarded in respect of such permanent utilization of the said land.

5. The petitioner claims to be the owner of the said land so utilized having obtained the same from his late father by way of a registered deed of family settlement.

6. In view of such permanent utilization of the said land without payment of compensation, the petitioner made a representation on 07.01.2008 praying for payment of immediate compensation to him. The State having failed to do so, the petitioner was constrained to file the instant writ petition.

7. The State contested the instant writ petition by filing affidavit. In the said affidavit, the State respondents admitted that the said lands had been requisitioned in L.A. Case No. 11/17 (A) of 1976/1977 and L.A. Case No. 11/25 E of 1984 85. The State respondents also admitted that the possession thereof was taken over and the said land had been permanently utilized for building link roads. The State respondents have further admitted that in contemplation of acquisition of the said land advance compensation had been computed and set apart u/s 8B of Act II of 1948. The State further admitted that in respect of aforesaid L.A. cases no award for payment of final compensation had been declared. The State prayed that, as Act II of 1948 under which the said lands were requisitioned had already lapsed on 13.03.1997, the L.A. cases may be converted to proceedings under Act I of 1894 in terms of West Bengal Act 7 of

1997.

8. I have heard the learned counsels for the parties and I have considered their submissions. It is an admitted position that in the instant case the said lands so requisitioned under Act II of 1948 have been permanently utilized without publishing a notice of acquisition u/s 4(1A) of Act II of 1948 and without awarding compensation for such purpose. As evident from the pleadings made in its affidavit -in-opposition, the State respondents do not contest such situation. On the other hand, the learned Counsel appearing for the State respondents submitted that the State may be permitted to take steps under the saving clauses engrafted in Act I of 1894 by the West Bengal Act 7 of 1997.

9. Act II of 1948 was a temporary legislation enacted by the State of West Bengal, inter alia, to provide for speedy requisition and acquisition of land for certain public purpose. Such legislation was extended from time to time and lastly in 1994 till 31st March, 1997. After 31st March, 1997 the aforesaid temporary legislation lapsed by efflux of time.

10. In order to perpetuate certain requisition and/or acquisition proceedings initiated under Act II of 1948, after it lapsed by efflux of time, the State legislature by W.B. Act 7 of 1997 inserted following provisions in section 9 of Act I of 1994:

Sections 9(3A) and 9(3B) read as follows:

(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 subsection (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 from all encumbrances.

(3B) The Collector shall also serve notice to the same effect on all such persons known or believed to be interested in any land, or to be entitled to act for persons so interested, the possession whereof has already been taken on requisition u/s 3 of the said Act, and notice for acquisition of such land has also been published under sub-section (1 a) 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 has, upon the Collector taking possession thereof, already vested absolutely in the Government, free from all encumbrances.

11. The aforesaid provisions, namely, 9(3A) and 9(3B), were inserted by the West Bengal Act 7 of 1997 in Act I of 1894, for enabling the State to take steps under Act I of 1894 in respect of requisition and/or acquisition proceedings which had been initiated under the Act II of 1948 provided the condition precedent enumerated in the said provisions are satisfied.

12. A perusal of section 9(3A) (Supra) would show that the said provision empowers the Collector to issue a public notice u/s 9(1) of Act I of 1894 to persons interested in the land which had already been taken on requisition u/s 3 of Act II 1948. In the event such public notice is issued, the provisions of sections 4(1), 5, 5A, 6, 7 and 8 of Act I of 1894 shall be deemed to be complied with and the date of such public notice issued u/s 9(3A) shall be the date of reference for the purpose of determining the value of such land under Act I of 1894.

13. I have no iota of doubt that the said lands have been illegally utilized by the State for the aforesaid public purpose without resorting to lawful acquisition proceeding and awarding compensation to the owners thereof in accordance with law. The action of the State is, therefore, clearly without authority of law and the State must promptly remedy the same by initiating proceeding under the enabling provision of section 9(3A) of Act I of 1894 to acquire the land which has been so utilized and promptly award compensation to the owners thereof.

14. I, therefore, dispose of this writ petition directing the respondent No. 2 to forthwith issue public notice u/s 9(3A) of Act I of 1894 within four weeks from the date of communication of this order and take all steps necessary for awarding compensation in accordance with law in respect of land so acquired in accordance with law. Such acquisition proceeding and declaration of the award with regard thereto shall be concluded as expeditiously as possible.

15. This writ petition is accordingly disposed of. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.