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**(2009) 07 CAL CK 0115**  
**In the Calcutta High Court**  
**Case No : F.M.A. No. 1060 of 2008**

Bishalaksha Basu and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision :** 05-07-2009

**Acts Referred:**

Constitution of India, 1950 — Article 300(A), 300(A)

Land Acquisition Act, 1894 — Section 11, 11A, 12, 12(1), 12(2)

West Bengal Land (Requisition and Acquisition) Act, 1948 — Section 3, 4, 4(la), 4(la), 5

**Citation :** 113 CWN 1205

**Hon'ble Judges :** Md. Abdul Ghani, J;Kalyan Jyoti Sengupta, J

**Bench :** Division Bench

**Advocate :** Bidyut Kiran Mukherjee and Tapan Mukherjee, for the Appellant;Prasenjit Basu and Golam Gous for the State, for the Respondent

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## Judgement

Kalyan Jyoti Sengupta, J.—This appeal was against the judgment and order of the learned Trial Judge dated 4th April 2008 by which the aforesaid writ petition was dismissed without granting any relief whatsoever. The short fact leading to filing the above writ petition, subsequently preferring the present appeal is as follows: On or about 15th November 1967 the State Government in exercise of power u/s 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948 (since repealed) (hereinafter referred to as the 1948, Act), requisitioned by LA case No. 49R/64-65, the petitioners" land measuring about 1.395 acres comprised in Dag Nos. 4207, 4209, 4210 and 4213 situated at Mouja Radhanagar, JL No. 39 in the district of Burdwan (hereinafter referred to as the said property) for the purpose of construction of Buri Shyamsundar Beel Drainage Scheme. During subsistence of the said requisition the State Government in exercise of power u/s 4(la) of 1948 Act published a notification in the Calcutta Gazette for acquisition of the said property. After acquisition as above no award was published until the time hereinafter mentioned, nor any compensation was paid.

In or about 1997, 1948 Act stood repealed but the operation of the said Act was

kept valid for the purpose of pending requisition and acquisition proceedings. Ultimately on or about 31st March 1997, suitable amendment was made in Act 1 of 1894.

2. The petitioners through their learned Lawyer demanded for either derequisition of the said property or to publish award for the said acquired property. On receipt of the said notice the Land Acquisition Collector, Burdwan informed by letter dated 18th January 2006, Damodar Canael Division being the requiring body, stating that the valuation of the said property was estimated at Rs. 2,32,580/- for land and a sum of Rs. 4,155/- for the structure. It was also informed by the said communication that since no fund was available the award could not be published. Therefore the said requiring body was reminded for payment of the compensation. Since no action was taken the petitioners filed a writ petition on or about 12th April 2006 asking relief for payment of compensation preceded by publication of the award of the said acquired property. By an order dated 12th April 2006 Justice Jayanta Kumar Biswas was pleased to dispose of the said writ petition (hereinafter referred to as the first writ petition) the relevant portion of the order of disposal of Justice Biswas is quoted hereunder:

"In my view, if the award has not been made, then the Collector must take necessary steps for making the award or for ensuring that the property is released together with payment of rent compensation and other damages. If the requiring body is not co-operating with the Collector then it is the duty of the collector to see that the requisition proceedings are brought to a logical conclusion, and that the petitioners are not placed at the mercy of the requiring body. This is very unfortunate that the requiring body having obtained possession of the property and being in enjoyment thereof, have given no attention to the mater of placement of the requisite fund."

3. For these reasons I dispose of the writ petition by the following order :

"Within three weeks from the date of receipt of a copy of this order, the collector shall make the award, declare it and publish it (emphasis supplied) and appropriate department of the Government shall approve it, if the award has not already been made, declared, approved and published. The requiring body and the other respondents shall ensure that entire amount of the compensation is placed at the disposal of the collector within that period. The compensation shall be paid to the persons in whose favour the award is made. If the petitioners or any one of them is entitled to receive the payment, then it shall be ensured that payment is made to him within the time mentioned in this order. If the collector is not in a position to make the award or pay the compensation, then he shall take immediate steps for releasing the land in favour of the persons from whom possession was obtained (emphasis supplied). All the exercise shall be completed within the time mentioned in this order. Needless to say that the parties will be free to choose their courses of action, if by the award made any one remains dissatisfied."

4. Neither of the parties preferred any appeal therefrom, rather the department has accepted the said order by issuing a notice dated 26th March, 2006 intending to make and publish the award. By the said notice the writ petitioners were asked to produce relevant documents in support of their respective claims. In response to the said notice the writ petitioners along with other co-owners appeared on 11th September 2006 and their appearance is recorded in a letter dated 15th September, 2006. In spite of appearance no step was taken for making and publishing the award until the time hereinafter mentioned. Thereafter the petitioners filed an application for contempt. In or about September 2007" in the said application for contempt direction for filing affidavit was given and the contempt proceeding is said to be still pending. During pendency of the contempt proceeding by a notice purported to be u/s 12(2) of the Act 1 of 1894 dated 15th January 2008 the Collector informed that a sum of Rs. 7,848/- has been assessed as being the amount of compensation of the said property and directed them to appear on 24th January 2008 to receive the same. On receipt of the said letter the petitioners through their learned Lawyer protested and did not accept the aforesaid compensation.

5. Thereafter the petitioners filed a second writ petition stating all the facts as stated in the earlier writ petition and also subsequent development and inaction as narrated above by us and prayed for following reliefs:

a) A Writ in the nature of Mandamus, commanding the respondents, their servants, agents and/or employees, and each one of them to rescind, recall and/or withdraw the impugned land acquisition proceeding in L.A. Case No. 49 R/64-65 in respect of lands situated at Plot Nos. 4207, 4209, 4210, 4211, "4213, Mouja-Radha Nagar, J.L. No. 39, P.S. & District Burdwan and also the notification, issued under Act II of 1948, including the order dated 24.01.08 u/s 12 of the L.A. Act and also consequential Memo No. 144(16 LA) dated 24.01.08 and the Memo No. 638/LA/Sqd II dated 27.02.08;

b) A Writ in the nature of Mandamus, commanding the respondents, their servants, agents and/or employees and each one of them to pass an order releasing the lands, which was acquired in the year 1967 in favour of your petitioners or their authorized Constituted Attorneys alter setting aside the land acquisition proceedings together with appropriate rent compensation since the date of acquisition, together with accrued interest thereon;

c) A Writ in the nature of Certiorari directing the respondents to certify and transmit all relevant records of this case particularly the entire proceeding of L.A. Case No. 49R/64-65 before this Hon'ble Court, so that conscionable justice may be administered by quashing the same;

d) Rule Nisi in terms of prayers (a), (b) and (c) above;

e) An ad interim order be passed directing the L.A. Collector, Burdwan the Respondent No. 2 herein to deposit the compensation amount, which has been allegedly assessed at Rs. 78,470/- before the Registrar General, Appellate Side

of this Hon''ble'' Court and stay all further proceeding of the L.A. Case No. 49 R/64-65, pending disposal of the Rule;

f) Make the Rule absolute after perusal of the records and after hearing the parties and their learned Advocates;

g) Costs of this application be paid to the, petitioners by the respondents herein;

h) Pass such further order/orders, direction/directions as to this Hon''ble'' Court may deem fit and proper.

6. It appears from the second writ petition, petitioners though challenged the entire proceedings in the context of the changed legal provision because of the inaction in spite of the orders being passed by this Court, the learned Single'' Judge at the stage of admission dismissed the said writ petition holding that the notice u/s 12(2) is valid in law as the learned Judge is of the opinion the same was issued within time.

7. Mr. Bidyut Kiran Mukherjee, learned Senior Advocate appearing in support of this appeal contends that the learned Trial Judge has failed to understand the scope and purport of the writ petition. It is not the issue of legality and validity of notice u/s 12(2) alone, the core issue is that the entire proceeding has now stood lapsed, notwithstanding insertion of amongst other sub-Section 3(B) of Section 9 of Act 1 of 1894 on virtual repealing of 1948 Act. In view of incorporation of Sub-section 3(B) with the proviso of Section 9 read with amended provision by inserting proviso in sub-Section 11 (A) the award has to be or ought to have been published within a period of two years from the date of issue of notice u/s 9 of Act 1 of 1894. In this case from the date of insertion of the aforesaid amendment with effect from 2nd May 1997 no step was taken for making and publishing any award.

8. He further contends that it is true on earlier occasion his clients did not challenge the proceeding, even then challenge as done here is tenable under law as there can not be any estoppel as against law. He further contends that since no award has been made within the stipulated time nor even the time granted by this Court so all proceedings stood lapsed. In other words he says that entire acquisition preceded by requisition exercise has now become null and void. Therefore sum result is that the property has been taken away by the Collector as well as requiring body in complete violation of Article 300(A) of the Constitution of India.

9. Mr. Prasenjit Basu, learned Advocate; appearing for the state submits that the contention of illegality of the entire proceedings cannot be agitated in the second writ petition as the same is hit by the principle of constructive res judicata by reason of the fact that the same could have been raised on earlier occasion, therefore, there can not be challenge now against notice u/s 12(1) of the Act I. He submits that by this notice only an intimation has been given that award has been made in terms of order of the Justice Jayanta Kumar Biswas by which the

petitioners were asked to receive the amount of compensation. If he is unhappy with this amount of compensation it is open for him to approach the appropriate forum to challenge not before this Court. At the time of hearing, the petitioners challenged only legality and validity of notice u/s 12(1) of the Act, there was no other challenge, as it is evident from the findings of the learned Trial Judge.

10. His further contention is that whether award is published or made within the time mentioned can be adjudicated in the contempt application pending adjudication, this issue is not within the domain of writ jurisdiction. According to him the implication of the amendment of Section 9 application by insertion of subsection 3 (A) & 3(B) of Act 1 of 1894 with the proviso of Section 11(A) clearly validate earlier proceeding. Impact of amendment by way of insertion of sections as above has been thoroughly discussed and decided by Division Bench of this Court in the case of State of West Bengal vs. Soumendra Mohan Dey reported in Indian Law Reports (2003) 1 Cal. 410. According to him the dismissal of the writ petition is right and justified.

11. The contentions of both the parties are carefully heard and noted by us, we have gone through the second writ petition minutely to understand the scope of the action and reliefs sought for and also the judgment and order of the learned Trial Judge. Upon reading thereof it appears to us that learned Trial Judge has proceeded to dispose of the writ petition only on the point of legality and validity of the notice u/s 12(2) but the other points raised in the writ petition have not been dealt with. In the judgment and order of the learned Trial Judge nowhere it has been mentioned that the writ petitioners did not press for other points at the time of hearing, for decision. In absence of such recording it can be presumed that all the points were pressed as ordinarily on the first day all the points are pressed for hearing. In the second writ petition the writ petitioners raised basic controversy that the acquisition proceedings has lapsed in view of non publishing of the award within the time as mentioned u/s 11 (A) of the Act I of 1894 and/or within the time mentioned in judgment and order of the same learned Trial Judge passed in first writ petition. In our view, with respect, this point should have been looked into and considered when the same have been pleaded specifically and was not abandoned expressly at the time of hearing. The notice u/s 12 is ultimate off-shoot of the acquisition proceeding. On the ground of non-consideration we could have remanded the matter to the learned Trial Judge for decision on other points, but the issue has been remaining outstanding for long 40 years so order of remand would be added misery because of delay. The matter is so old that during pendency of this matter the law relating to requisition and acquisition has undergone a change in such a manner which apparently make any one to be confused. Therefore, the task is not so easy to find out the status of the present proceeding on the anvil of law now prevailing. Before we discuss this matter specifically we feel it appropriate to record the changes of law having taken place during pendency of this matter in view of gradual withdrawal of applicability of 1948 Act. When the land in question was requisitioned followed by acquisition, 1948 Act was in operation in its full force.

In 1994 Legislature has brought an amendment namely West Bengal Land (Requisition and Acquisition (Amendment) Act, 1992 whereby and whereunder by virtue of Section 3 of the Amendment Act the provision of Section 3 of the principal Act was omitted with effect from 1st day of April 1994, but the land already requisitioned and acquired on that date was kept valid. To say precisely the intent and purpose of Legislature while bringing State Amendment was not to take recourse to the 1948 Act either for requisition or acquisition on and from 1st Day of April 1994 but whatever was pending would not be affected. It would not be inappropriate to set out relevant portion of the Amending Act:

"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 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".

12. Thus it is clear that the present proceedings remained unaffected, naturally the provision of payment of compensation and other things would follow. Thereafter another amendment was brought by the State Legislature namely West Bengal Land (Requisition and Acquisition) (Amendment) Act 1996. By this Amendment there has been significant change by incorporating a new Section namely Section 7 (A) of the principal Act. Section 7 (A) had provided time limit for making and publication of award in respect of the land acquired under 1948 Act and by this Section it has also been specifically mentioned consequence to follow, in case of failure to make and publish award within the time as above that is to say the notice for acquisition shall lapse. Obviously the effect of the said sub-section 7(A) was akin to Section 11 (A) of Act 1 of 1894. The relevant portion of the said Second Amendment Act is set out hereunder :

"7A. "Award by Collector - 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, (West Bengal Act 14 of 1994), the award shall be made within a period of one year from the date of commencement of that Act."

13. Thus upon reading the aforesaid two amendment Acts there has been confusion as to the date to be reckoned for computation of the period of one year in the said proviso. However, such confusion has been removed by Division Bench Judgment of this Court cited by Mr. Basu and it is clarified therein that one year time is to be computed from the date of commencement of 1996 Amendment Act namely from 8th October 1996. Therefore, in the context of above amendment as far as this case is concerned, logically the award ought to have been published within 8th October, 1997 and in breach thereof the consequence would have followed, but during currency of Amending Act of 1996 there has been State Amendment incorporating various Sections and sub-Sections in Act 1 of 1894 in 1997 with effect from 2nd May 1997. By this Amendment of 1997 sub-Sections 3A and 3B in Section 9 of the Act 1 of 1894 was inserted. This apart there has been an insertion of proviso with Section 11A of the Act 1 of 1894. Similarly there has been little insertions of various section and subsections in several sections viz. 54A and 23 etc. The aforesaid 1997 Amendment by way of insertion of new sections and subsection in Act 1 of 1894 has been examined and discussed as to its scope and applicability in the aforesaid judgment. But ultimately only one issue viz. what would be the relevant date for the purpose of computation of compensation has been decided.

14. Whether from the date of issuance of notice u/s 4 (1a) 1948 Act or from any other date for the purpose of assessment of compensation. In that case no other contention nor any other issue was urged and as such it was not decided whether a proceeding initiated before amendment Act would lapse in view of subsequent change of law or not. In this case with respect the learned Trial Judge has not examined the aforesaid aspects.

15. Broadly speaking if Section 7A of 1948 Act (as amended) by 1996 Amendment Act is applied then obviously the instant proceedings would have lapsed in view non-publication of the award by 8th October 1997 but before happening of that situation the Amendment Act of 1997 came into force from 2nd May 1997 whereby and whereunder by virtue of insertion of the various section and subsection as noted above the effect of Section 7A has come to an end, even though 1997 State Amendment Act expressly nowhere provides for repealing of Section 7A but the effect tantamount to implied repealing of Section 7A as such the status of the present proceeding has to be governed by the Act 1 of 1894 as amended by the State Amending Act of 1997. In this case sub-Section 3B of the Amending Act is applicable which provides as follows:

"(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 the 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."

16. It is true Section 7A by necessary implication is repealed but by virtue of insertion of Section 54A with little modification provision of Act 1 of 1894 has been adopted consequently time limit for publication of award is now governed by Act I of 1894.

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 ?and referred to in sub-Section (3A) and sub-Section (3B) of Section 9 mutatis mutandis.

17. Thus it is clear that Section 11A of Act 1 of 1894 will also be applicable with regard to the time limit of publication of award and also consequence in case of default or failure. We feel it necessary to reproduce the entire Section 11A together with the proviso as inserted by amending Act of West Bengal 1997.

"11A. Period within which an award shall be made.- The Collector shall make an award u/s 11 within a period of two years from the date of the 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 (68 of 1984), the award shall be made within a period of two years from such commencement.

Explanation. - In computing the period of two years referred to in this Section, the period during which any action or proceeding to be taken in pursuance of time said declaration is stayed by an order of a Court shall be excluded.

After the proviso, the following proviso shall be added, namely,

"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 the issue of the public notice u/s 9."

18. It will appear from the careful reading of Section 11A with all the proviso(s) including West Bengal Amendment that in case of acquisition initiated under Act 1 of 1894 award has to be made from the date of publication of the declaration as provided u/s 6 of Act 1 of 1894, but in case of requisition or acquisition under Act 1948 award has to be published within two years from the date of issue of the public notice u/s 9 and in case of breach thereof the entire proceedings for the acquisition of the land would stand lapsed automatically.

19. In the backdrop of the discussion of the aforesaid legal position as on today this case has to be examined. Naturally scope of enquiry in this case is whether proceeding stand lapsed or subsists. If status is latter next question arises whether the notice purported to be u/s 12 is legally sustainable or not. It is clear from proviso inserted by State Amendment that so long as the notice u/s 9 of the Act 1 of 1894 is not issued in case of pending acquisition proceedings under 1948 Act by virtue of the aforesaid provision the proceeding will remain valid, but the moment notice is issued the award has to be published within two years from the date of issue of such notice in case of default the proceeding will lapse automatically.

20. Factually in this case even after commencement of the said Amendment Act of 1997 no step has been taken either for publication of notice u/s 9 nor publication of award until the first writ petition was filed. Therefore, the issue of validity of proceedings could not be challenged in previous writ petition, so point of constructive res judicata urged by Mr. Bose is not tenable. We are of the opinion plea of constructive res judicata can be taken if it is found any issue was subsisting at the time of filing previous proceedings, but not taken by way of attack or defence. In this case this issue did not crop up. We have already noted that on 18th January 2006 in response to letter written by the learned Lawyer for the petitioner/appellant the Collector communicated to the requiring body that the assessment of compensation of the land in question together with structure was made. But the aforesaid communication cannot be said to be a notice u/s 9 of the said Act as it is merely a communication to the requiring body and a copy thereof was forwarded to the learned Lawyer for the petitioner. Then having found no action on the part of the Collector the first writ petition was moved and Justice Biswas by the aforesaid order directed that within three weeks from the date of communication of the order the Collector should make and publish the award if it was not already made. It was also made clear in the event the Collector is not in a position to make the award or pay compensation he shall take immediate steps for releasing the land in favour of the person from whom the possession was obtained.

21. It is an admitted position in this case the land stood vested to the Government the moment notice issued u/s 4 (1a) of 1948 Act. Ordinarily the land can not divest, but here because of the present position of the law by way of amendment as noted above from time to time that if the acquisition made under

1948 Act and award is not made within the time limit then by operation of law divesting is possible on the ground of proceedings being lapsed.

22. From the record it appears that in spite of the said order passed by Justice Biswas in presence of learned Lawyer for the State and communication thereof as admitted in letter of the Collector dated 22nd August 2006, from April to August 2006 there is no whisper to make and publish the award. On 15th September 2006 there has been further representation to the Collector reminding him for passing of the award but there has been no response. Even in the communication of the Collector dated 25th January, 2008 there was no whisper to make and publish the award rather mention complaint of non-appearance of the representative of the petitioners to receive the notices. Surprisingly by letter dated 15th January 2008 a notice was issued that award had already been published. We fail to understand till 24th January 2008 there was no whisper of award having been made how by a letter dated 15th January 2008 it could be communicated that award had already been made. We are of the view that collector cannot avoid his obligation to make and publish the award in terms of the Court's order within time mentioned therein; from August 2006 till October 2008, there was no whisper and no activity on the part of the Collector.

23. Under such circumstances we hold that award has not been published either within the time limit of the order of Justice Biswas or within the time limit of Section 11A read with its state inserted proviso of the said Act as no notice u/s 9 was issued within reasonable time. When no time limit is fixed for issuance of notice u/s 9 as provided u/s 11A second proviso of L A Act it has to be done within reasonable time, in this case we feel two years as u/s 7A time limit was fixed two years from the date of insertion of the said Amendment viz from 2 May, 1997. We are of the view that the time limit of two years from the date of issuance of letter dated 15th January, 2008 in this case cannot be made applicable by reason of the fact that when the Court after considering the facts and circumstances of this case particularly taking note of period of pendency of the matter fixed the time limit for three weeks then time limit for two years from issuance of notice u/s 9 of Act I of 1894 cannot be applied here. In the order of Justice Biswas it has been made clear that in case of failure of making and publishing of award or compensation, the land has to be released from acquisition.

24. We therefore hold that the entire acquisition proceeding has now lapsed, so-called award passed beyond the time fixed by the Court is set aside. We therefore hold that land of the petitioner, has been taken by the Collector without due process of law rather in breach of provision of Article 300 (A) of the Constitution of India.

25. Neither of the learned lawyers of the parties is in a position to tell us whether the land in question is in a condition to be returned to the writ petitioners.

26. Under such circumstances, we grant liberty to the writ petitioners to initiate appropriate proceedings for recovery of possession of the land if it is utilized by the State and in that case, it would be open for them to recover the compensation and/or damages for illegal taking over of the land. If the land is not utilised, then it would be open for them to initiate action for recovery of physical possession of land with compensation, as may be advised. As prayed for, operation of this judgment is stayed for a period of four weeks from date.

Md. Abdul Ghani, J.

I agree.