

(2011) 09 CAL CK 0016
In the Calcutta High Court
Case No : A.S.T. No. 486 of 2011

Kolkata Metropolitan Development Authority

APPELLANT

Vs

Lakshmi Rani Pan

RESPONDENT

Date of Decision : 30-09-2011

Acts Referred:

Constitution of India, 1950 — Article 300A

Land Acquisition Act, 1894 — Section 11, 11A, 7(3B), 9, 9(3A)

West Bengal Land (Requisition and Acquisition) Act, 1948 — Section 3, 3(1), 4, 4(1a),
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Citation : (2012) 2 CHN 393

Hon'ble Judges : Kalyan Jyoti Sengupta, J; Joymalya Bagchi, J

Bench : Division Bench

Advocate : Debayan Bera, Partha Sarathi Bose, S. Talukdar in A.S.T. 486 of 2011, Amal Baran Chatterjee, Samiran Giri in F.M.A. 582 of 2011 and Amit Kr. Pan, for the Appellant; Amit Kr. Pan, for the Respondent

Final Decision : Dismissed

Judgement

Joymalya Bagchi, J.—These appeals have been filed challenging the judgment and order dated 24.08.2010 passed by the learned Single Judge of this Court in W.P. 12311 (W) of 2011 whereby and whereunder the learned Single Judge set aside the impugned notice of acquisition dated 9th May, 2000 and also the award dated 8th May, 2002 and passed directions for initiating appropriate acquisitions proceeding in accordance with law and other consequential directions.

Factual Matrix

The facts of the instant case may be summarised as follows :

a) The respondent/petitioner was the owner of plot No. 2548/2872 measuring an area 0.09 acres of land and the said land was situated within the Mouza Kasba under Police Station Jadavpur (presently known as Kasba), J.L. No, 13 district South 24-Parganas (hereinafter referred to as the said plot).

- b) For the public purpose of building a road namely, R.B. Connector under East Calcutta Metropolitan Development Project, sometime in the year 1979-1980 the Collector initiated proceeding under the West Bengal Land (Requisition and Acquisition) Act, 1948 (W.B. Act II of 1948) (since repealed) being case No. LA/II/1968 of 1979-1980 for requisition of a vast area of land including the said plot.
- c) The requisition was initiated by serving a notice u/s 3(1) of the W.B. Act 2 of 1948. The possession of the said land was taken sometime in the year 1980.
- d) On or about 14th January, 1988 the authorities acquired the said plot upon publication of notification u/s 4(1A) of W.B. Act 2 of 1948 and the said notification was duly published in the Extraordinary Kolkata Gazette on 14th January, 1988.
- e) on 1st April, 1994, the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1994 (hereinafter referred to as W.B. Act IV of 1994) came into force extending the life of W.B. Act II of 1948 up to 31.03.1997.
- f) On 8th October, 1996, the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1996 (hereinafter referred to as the W.B. Act XXV of 1996) came into force with retrospective operation 01.04.1994.
- g) On 13th March, 1997 W.B. Act II of 1948 lapsed.
- h) On 2nd May, 1997 Land Acquisition (West Bengal Amendment) Act, 1997 (W.B. Act of 1997) was notified and the same came into force retrospectively from 1st day of April, 1997.
- i) In view of W.B. Act XXV of 1996, as no award in the instant case had not been declared on or before 1st April, 1995, case No. LA 11/68/1979-80 stood lapsed.
- j) On 12th January, 1998, the petitioner was served with notice u/s 9(3A) of Act I of 1894 as amended by W.B. Act 7 of 1997.
- k) In response to the said notice, on 19th January, 1998 the petitioner duly appeared before the Collector and produced all relevant documents in support of her claim and requested payment of compensation at an early date.
- l) No steps were taken by the Collector in the matter and the said notice stood lapsed/abandoned.
- m) Thereafter the petitioner received another notice this time u/s 9(3B) of Act I of 1894 as amended by W.B. Act 7 of 1997 calling upon the petitioner to appear before the Collector on 29.05.2000 for the purpose of hearing.
- n) On 29th May, 2000, the petitioner appeared before the Collector and submitted that the said notice dated 9th May, 2000 was not sustainable in law inasmuch as there was no notice u/s 4(1A) of W.B. Act II of 1948 subsisting on the day on which such notice was issued i.e. on 9th May, 2000.
- o) Subsequently, the petitioner came to know that a purported award was

declared on 8th May, 2002 although no notice was served on the petitioner in respect of the declaration of the said award.

p) In the backdrop of the aforesaid facts, the respondent/petitioner filed the instant writ petition, inter alia, praying for the following reliefs :

i) A Rule in the nature of Mandamus commanding the respondents to rescind and/or withdraw the notice dated 9th May, 2000 being Annexure P-3 herein as well as Award, if any, so made on 8th May, 2002 in connection with the Case No. LA-II/68 of 1979-80;

ii) A writ in the nature of Mandamus commanding the respondent to initiate a fresh proceeding under the Land Acquisition Act, 1894 for the purpose of determining the compensation in question in respect of the said land and further directing the respondents to pass the Award and pay compensation accordingly after treating the earlier proceeding being Case No. LA-II/68 of 1979-80 so initiated under the West Bengal Land (Requisition & Acquisition) Act, 1948, since repealed, as stood lapsed.

Findings by the First Court:

2. In the course of hearing before the First Court a dispute arose as to whether approval had been taken from the State Government in terms of Section 11 of Act I of 1894 or at all while declaring the award in the instant case. The learned Single Judge called upon the Collector to produce the relevant records the Court so as to examine whether any valid award with prior approval of the State Government was declared by the Collector.

3. After perusing the records, the learned Single Judge came to the following conclusion:

...From the above records, it appears that a list of award declared by the respondent No. 2 in the matter on May 8, 2002. It is further revealed from the above records that the Deputy Secretary to the Government of West Bengal, Land and Land Reforms Department recorded a note in the above note sheet dated July 9, 2002 that the Government approved that award. I find that the above note is not correct in view of the further note dated July 9, 2008 appearing from page 130 of the above note sheet the Additional District Magistrate (L/A) to the effect that the above award was sent to the Government for post facto approval on that day.

4. The learned Single Judge further recorded:

....At the cost of repetition, let it be recorded that no record is produced before this Court to show that approval of the State Government was obtained for declaration of the above award.

5. After considering the rival contentions, the learned Single Judge allowed the writ petition and quashed the impugned notice dated 9th May, 2000 and has also the award dated May 8, 2002. By the self-same judgment and order, the learned

Single Judge further directed the since the land had already been utilized for a public purpose and was not possible to be restored to the possession of the petitioner, the respondent authority would initiate appropriate acquisition proceedings in accordance with law in respect of the land in question within a period of 4 months from the date of the order. The respondent authority was further directed to pay rent compensation to the petitioner for possession of the land without any authority of law from the date of its actual possession till the date of initiation of acquisition proceeding in terms of the aforesaid direction. By the self-same order, the learned Single Judge also directed the Principal Secretary to the Government of West Bengal Land and Land Reforms Department to fix up the responsibility for declaration of the award which has no authority in the eye of law and to release the above costs from the erring officer from his salary or by way of raising public demand in case of his retirement from government service.

Submissions from the bar :

6. Being aggrieved by the aforesaid judgment and order, the State respondent as well as the requiring authority, namely KMDA (not being a party respondent before the First Court and having been granted leave to prefer appeal) have assailed the same before us in the instant appellate proceedings.

7. Appearing for the local authority namely, Kolkata Metropolitan Development Authority (KMDA for short), Mr. Debayan Bora, Senior Advocate, submitted that notice sub-section (1A) of section 4 of W.B. Act II of 1948 had not lapsed on 9th May, 2000, when the fresh notice u/s 9(3B) of Act I of 1894 was amended by W.B. Act 7 of 1997 was issued upon the respondent/ petitioner. It was his submission that such notice was saved by operation of law, particularly, by operation of W.B. Act 7 of 1997,

8. He further submitted that the award was validly declared in terms of section 11 of Act I of 1894 and within the time limit as specified u/s 11A of Act I of 1894 as amended by the W.B. Act 7 of 1997.

9. In the course of reply, learned advocate for KMDA, further submitted that they were not made a party respondent in the original writ proceeding and therefore the impugned judgment and order is liable to be set aside.

10. In support of their contentions, they relied on the following judgments".

a) Smt. Bailamma @ Doddabailamma (Dead) and Others Vs. Poornaprajna House Building Co-operative Society and Others,

b) Delhi Development Authority Vs. Bhola Nath Sharma (Dead) by L.Rs. and Others,

c) Unreported Judgment dated 17.06.2011 passed by the Special Bench of this Court in F.M.A. No. 798 of 2007, State of West Bengal & Ors. vs. Sabitri Debi & Ors..

11. Mr. Amal Baran Chatterjee, learned Advocate appearing for the appellant/ State authorities adopted the submissions of Mr. Bera, Senior Advocate appearing for KMDA.

12. In addition thereto, he raised a new plea that the writ petition which was filed after 9 years from the date of issuance of notice u/s 9(3B) of Act I of 1894 as amended by W.B. Act 7 of 1997 ought not to have been entertained due to delay and laches on the part of the respondent/petitioner in approaching this Court.

13. He, however, conceded that such plea was never raised before the learned Single Judge at the time of admission and the matter was adjudicated on merit - by the First Court.

14. In support of his submissions, he relied on the case of Banda Development Authority, Banda Vs. Moti Lal Agarwal and Others,

15. Rebutting the aforesaid submissions, Mr. Amit Pan, learned Advocate appearing for the respondent/writ petitioner submitted that the notice dated 09.05.2000 u/s 9 (3B) of W.B. Act I of 1894 as amended by W.B. Act of 1997 was issued without authority of law inasmuch as there was no valid notice u/s 4(1A) of W.B. Act II of 1948 on that day by virtue of section 7A of W.B. Act II of 1948 as amended by W.B. Act XXV of 1996.

16. He further submitted that no valid award has been issued till the date of filing of the writ petition inasmuch as the purported award dated 8th May, 2002 was passed without prior approval of the State Government in utter violation of section 11 of Act I of 1894.

17. In support of his contention he relied on the following decision:

State of U.P. and Others Vs. Rajiv Gupta and Another, .

Relevant Legislative Provisions applicable to the instant case :

18. For a better appreciation of the arguments advanced by the parties, a chronological history of the legislative provisions applicable thereto may be apposite:

a) In 1948 a temporary legislation, namely, West Bengal Land (Requisition and Acquisition) Act, 1948 (W.B. Act II of 1948) was enacted by the State of West Bengal for requisition and speedy acquisition of land for purposes as stated in the preamble of the said law. The said legislation being a temporary one was extended from time to time.

b) Lastly, by W.B. Land (Requisition and Acquisition) (Amendment) Act, 1994 (W.B. Act IV of 1994) the life of W.B. Act II of 1948 was extended upto 31st March, 1997.

c) With the legislative intent of ensuring expeditious conclusion of pending acquisition proceeding under W.B. Act II of 1948, the State Government enacted

another Amending Act namely, West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1996 (W.B. Act XXV of 1996). The said Amending Act was enacted on 18.10.1996 but was given retrospective effect from 01.04.1994. The said Amending Act inserted section 7A to the Principal Act namely, W.B. Act II of 1948.

Section 7A reads as follows :

7A. Award by Collector. - The collector shall made an award under sub-section (2) of section 7 within a period of three years from the date of publication of the notice in the Official Gazette under sub-section (1a) of section 4 (hereinafter referred to as the said notice), and if such award is not made within the period as aforesaid, the said notice shall lapse:

Provided that in a case where the said notice has been published more than two years before the commencement of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1994, the award shall be made within a period of one year from the date of commencement of that Act.

Explanation. --In computing the period of three years or one year as the case may be, under this section, the period during which any action or proceeding to be taken in pursuance of the said notice is stayed by an order of a Court having jurisdiction, shall be excluded.

By virtue of the aforesaid amended provision, notices of acquisition issued u/s 4(1a) of W.B. Act II of 1948 two years prior commencement to the Act IV of 1994 i.e. all notices issued prior 31.03.1992 would stand lapsed in the event awards were not declared within one year from the date of commencement of that Act i.e. W.B. Act IV of 1994 i.e. by 31.03.1995.

In respect of other notices, awards were to be declared within three years from the date of issuance of such notices of acquisition, failing which the such notices shall stand lapse.

d) On 31.03.1997 W.B. Act II of 1948 lapsed.

e) The State Government passed another Amending Act namely, Land Acquisition (West Bengal Amendment) Act, 1997 (W.B. Act 7 of 1997) for amending Land Acquisition Act, 1894 (Act I of 1894). Such amending Act was notified on 2nd May, 1997 and was given retrospective effect from 1st April, 1997. The said Amending Act received Presidential assent on 4th June, 1997. By the said Amending Act sub-sections (3A) and (3B) were introduced to section 9 of Act I of 1894 and a proviso was also added to section 11A of Act I of 1894.

19. Relevant extract of section (3B) is set out hereinbelow:

(3-B) The Collector shall serve notice to the same effect on all such persons known or believed to be interested in any land, or to be entitled to act for persons so interested, the possession whereof has already been taken on requisition u/s 3 of the 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 5-A, 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 (1-a) 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:

20. The proviso introduced in section 11A of Act I of 1894 read as follows :-

Provided further that in respect of the acquisition of the land referred to in sub-section (3-A), and sub-section (3-B) 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.

21. A bare reading of section (3-B) would show that the condition precedents to issue a notice under the said sub-section are that (i) the possession of the land in question has already been taken on requisition u/s 3 of W.B. Act II of 1948 and (ii) a notice u/s 4 (1-a) of the said W.B. Act II of 1948 has also been published in respect of the said land. The question which falls for consideration in these appeals is whether the Government can invoke the provisions of said sub-section when the notice issued u/s 4(1-a) of W.B. Act II of 1948 had already lapsed on the date on which the aforesaid subsection came into force.

The issues which fall for decision are as follows :

I) Whether the appellant/respondent authorities had jurisdiction to issue notice u/s 9(3B) of the Act I of 1894 as amended by W.B. Act 7 of 1997 when the notice u/s 4(1A) of W.B. Act II of 1994 had already lapsed on 31.03.1995 ?

II) Whether any valid award as provided u/s 11 of Act I of 1894 was passed within two years from issuance of such notice u/s 9(3B) of Act I of 1894 as required by section 11A of Act I of 1894 as amended by W.B. Act 7 of 1997?

III) Whether there was any delay or laches on the part of the petitioner in approaching this Court ?

IV) Whether non-joinder of the local KMD as a necessary party to the writ proceeding should grand to set aside the impugned judgment and order when they are a party in the appellate proceeding ?

Our Findings:

22. A perusal of the materials on record reveal that in the instant case, the proceeding under W.B. Act II of 1948 was initiated in 1979-1980 being case No. LAII/68 of 1979-1980 for acquisition of vast track of land including the said plot by requisitioning the same u/s 3 of W.B. Act II of 1948. The possession of the said land was taken sometime in 1980. After a lapse of eight years the date of taking over possession, on 14th January. 1998 the land is claimed to have been acquired by issuing a notice u/s 4(1A) of Act II of 1998 dated 6th January, 1998.

No award was declared in respect of such acquisition till 31st March, 1995. As a result of operation of section 7A of W.B. Act II of 1948 as amended by W.B. Act XXV of 1996, the said notice u/s 4(1A) of W.B. Act II of 1948 stood lapsed.

23. After the lapse of the said acquisition proceeding, as aforesaid, on 12th January, 1998 a fresh notice u/s 9(3A) of Act I of 1894 as amended by W.B. Act 7 of 1997 was issued upon the respondent/petitioner. The respondent/petitioner attended the hearing in respect of the said notice. The State authorities did not proceed with the said notice and abandoned the same.

24. Subsequently, another notice dated 09.05.2000 u/s 9(3B) of Act I of 1894 as amended by W.B. Act 7 of 1997 was issued upon the respondent/ petitioner. The respondent/petitioner appeared before the Collector and submitted that the said notice was not sustainable in law inasmuch as there had been no notice subsisting u/s 4(1A) of W.B. Act II of 1948 on the date of issuance of such notice.

25. Subsequently, it is claimed by the respondent authorities that an award was declared on 08.05.2002. The learned Single Judge on perusing the records of the case found that there was no prior approval given by the State Government to any award declared in the instant case as late as on 9th July, 2008, let alone within two years from the issuance of notice u/s 9(3B) (supra) as required by section 11A of the Act I of 1894 as amended by W.B. Act 7 of 1997.

Issue No. I

26. This issue as to whether the Amending Act namely, W.B. Act 7 of 1997 saves a notice issued u/s 4(1A) of W.B. Act II of 1948 prior to 31.03.1992, inter alia, fell for decision before a Special Bench of this Court in F.M.A. No. 486 of 2007. The Special Bench by its judgment dated 17.06.2011 held as follows;

....Thus, the effect of the LAND ACQUISITION (WEST BENGAL AMENDMENT) ACT, 1997 which came into operation on the midnight between March 31, 1997 and April 1, 1997 prevented all those notices under sub-section (1a) of section 4 issued after April 1, 1994 from being lapsed by giving scope of revival by way of a notice under sub-section (3B) of section 9 of the said Act if award had not been passed within three years from the date of publication of such notice and which would otherwise lapse if the said Act of 1997 would not come into operation at the midnight of March 31, 1997.

However, in respect of those notices under sub-section (1a) of section 4 which were issued prior to March 31, 1992 and in respect of which no award had been passed by March 31, 1995, those notices had already lapsed and by the Amendment Act 1997 of the Land Acquisition Act by the West Bengal Legislature, no provision has been made for revival of the lapsed notices which stood lapsed already on March 31, 1997 for non-compliance of the provision of Amendment Act of 1996. By the Amendment Act of 1997 only those notices under sub-section (1a) of section 4 which would have lapsed on the midnight of March 31, 1997 or on subsequent date, have been saved.

27. The Special Bench, further, held as follows :

...Thus, by the Amendment Act of 1996, the proceedings in respect of the notices given prior to March 31, 1992 stood lapsed if award was not published within one year from March 31, 1994.

28. Applying the aforesaid ratio to the facts of the instant case, there is no escape from the conclusion that the notice u/s 4(1a) of W.B. Act II of 1948 dated 06.01.1988 and the acquisition proceeding ensuing there from had stood lapsed on 31.03.1995. Hence, there was no valid notice u/s (1a) of W.B. Act II of 1948 on 09.05.2000 so as to clothe the appellant/ respondent authorities with jurisdiction to issue the impugned notice u/s 9(3B) of Act I of 1894 as amended by W.B. Act 7 of 1997.

29. In view of such facts, we are in concurrence with the finding of the learned Single Judge that the impugned notice u/s 9(3B) of Act I of 1894 is wholly without jurisdiction and unsustainable in law.

Issue No. II

30. With regard to issue No. II it is an admitted position that no prior approval was obtained from the State Government before declaring purported award on 08.05.2002. It is a mandatory requirement of law, as provided u/s 11 of Act I of 1894, that there must be a prior approval of the appropriate government before an award is validly declared under the said provision.

31. In this regard, the judgment cited by the appellant/respondent authorities reported in Smt. Bailamma @ Doddabailamma (Dead) and Others Vs. Poornaprajna House Building Co-operative Society and Others, does not support their contention. In fact, in paragraph 25 of the said judgment it has, inter alia, been held as follows :

...The award which has already been signed by the Collector becomes an award as soon as it is approved by the Government without any alteration....

32. The aforesaid observation in the said judgment makes it amply clear that only after grant of approval by the appropriate government an award becomes valid in the eye of law. This brings us to the second and more pertinent question as to whether the award in the instant case has at all been approved by the State Government and, if so, when ?

33. To find an answer to this question, the learned Single Judge delved into records of the instant land acquisition case and the same revealed a most distressing and contradictory state of affairs.

34. It is the finding of the learned Single Judge that the records on one hand revealed that there was a note dated 9th July, 2002 in the note sheet that the government approved the award. Subsequently, there is another contradictory note dated 9th July, 2008 in the said note sheet where the Additional District Magistrate (LA) has recorded that the above award has been sent to the

government for post-facto approval on that date. From such contradictory notes in the note sheet it is therefore not clear as to whether any approval, prior or otherwise, was at all granted to the above award as late as on 9th July, 2008. Further, the learned Single Judge has observed that ever in the course of hearing no record was produced before the Court to show that approval of the State Government was obtained for declaration of the above award.

35. These facts irresistibly lead us to the following conclusion :

A) No award with prior approval of the State Government was declared in the instant case within two years of issuance of notice u/s 9(3B) of Act I of 1894 as amended by W.B. Act 7 of 1997.

B) No valid award with approval of the State Government has been declared as late as on 9th July, 1998. Even during the hearing before the First Court, the appellant/State respondents failed to produce any approval.

36. In the case reported in State of U.P. and Others Vs. Rajiv Gupta and Another, the Supreme Court has held that prior approval of the appropriate Government is mandatory for declaration of a valid award.

37. Moreover, section 11A of Act I of 1894 as amended by W.B. Act 7 of 1997 mandates declaration of such an award within two years from issuance of notice u/s 7(3B) of the said Act. In the instant case, no valid award with approval of the State Government could even been produced before this Court at the time of hearing of the writ petition,

38. We are, therefore, inclined to agree with the opinion of the learned Single Judge that the purported award dated 08.05.2002 is nonest and void in the eye of law being bereft of any approval, prior or otherwise, being in gross violation of the provisions of section 11 and 11A of Act I of 1894 as amended by W.B. Act 7 of 1997.

Issue No. III

39. Issue No. III was raised as a new plea for the first time before us. It was submitted by the learned lawyer for the appellant/State respondent that the learned Single Judge ought not to have admitted the writ petition on the ground of delay and laches. He argued that the writ petition was filed on 9th May, 2010 challenging the impugned notice dated 9th May, 2000 u/s 9(3B) of Act I of 1894 and the purported award declared in respect thereof on 8th May, 2002. He submitted that there is an inordinate delay of about nine years in instituting the instant proceeding and on this ground along the writ petition ought to have been dismissed.

40. In support of his contention the learned Lawyer relied on a decision of the Supreme Court namely, Banda Development Authority, Banda Vs. Moti Lal Agarwal and Others,

41. The learned Lawyer however conceded an admitted position that the

appellant/State respondents did not at the very threshold raise such objection and permitted the writ petition to be admitted and be disposed of on merits.

42. It is settled law that once the Court entertains a writ petitioner and decides the same on merits it would be inequitable to reverse such decision on the ground of delay and laches alone. A Constitution Bench of the Supreme Court in the case of P.B. Roy vs. Union of India reported in AIR 1972 Supreme Court 908 at paragraph 8 of the said judgment, inter alia, held:

...the delay in filing the petition was overlooked on the ground that, after the admission of a writ petition and hearing of arguments, the rule that delay may defeat the rights of a party is relaxed and need not be applied if his case is "positively good.

43. In the instant case we find that the impugned notice u/s 9(3B) of Act I of 1894 was patently without jurisdiction. Further, the purported award dated 08.05.2002, being bereft of any approval, far less prior approval, is non-est and void in the eye of law. We cannot turn a blind eye to such patent, illegalities perpetrated by the State resulting in deprivation of property without any authority of law in utter breach of Constitutional guarantee under Article 300A of the Constitution of India on the technical plea of delay and laches.

44. It is settled law that delay or acquiescence would not legitimise the action of the officials of the appellant if there is none. When the impugned notice violates the very statute from which it derives its force, delay in challenging the same cannot clothe it with legitimacy. Reference in this regard may be made to the case of Competent Authority Vs. Barangore Jute Factory and Others,

45. Factually too, we find there is no delay in instituting the instant proceeding. No valid award had been declared in the instant case. Even in the course of hearing before the First Court, no approval by the State Government could be produced. The acquisition proceeding, which was patently without jurisdiction, had not concluded with the declaration of a valid award with due approval of the State Government even on the date of institution of the writ petition. The cause of action to challenge the impugned proceeding survived and continued on a day to day basis as the said impugned proceeding had not concluded with the declaration of a valid award with approval of the State Government on the date of institution of the writ petition.

46. The case cited by the learned lawyer, that is, Banda Development Authority (supra) is clearly distinguishable on facts.

47. In the said case the writ petitioners had initially filed a suit wherein they had not challenged the acquisition proceeding. Subsequently, in the writ proceeding they threw a challenge to the said acquisition proceeding on the ground that the award had not been declared within two years from the date of initiation of the proceeding. However, in the said case a valid award had already been declared by the appropriate Government much prior to the institution of the writ petition

unlike the facts in the instant case where approval to the purported award could not even be shown on the date of hearing of the writ petition before the learned Single Judge.

48. We have no hesitation to hold that this belated plea that the instant judgment delivered on merits requires to be set aside on the technical ground of delay and laches is wholly unsustainable in the facts of the instant case.

Issue No. IV

49. Issue No. IV was raised by the learned lawyer of KMDA in course of their reply the learned Lawyer of the said local authority submitted that though they were necessary parties they had not been made parties respondents in the writ petition and were not they heard by the learned Single Judge. We are not persuaded to disturb the judgment and order of the learned Single Judge on such premise inasmuch as the said local authority had been granted leave to appear and its appeal was along with the appeal filed by the appellant-State were extensively heard by us. Therefore, the said authority cannot claim to have suffered any prejudice on such score. The judgment cited by the learned Lawyer in support of his contention reported in Delhi Development Authority Vs. Bhola Nath Sharma (Dead) by L.Rs. and Others, has no manner to the application to the facts of the instant case.

Conclusion:

50. We, therefore, dismiss the appeals and affirm the judgment and order dated 24.08.2010 passed by the learned Single Judge.

51. We, however, clarify that before imposing any pecuniary or any other liability upon any erring officer as directed by the learned Single Judge the said officer must be given an opportunity of hearing.

52. When the State Government is not asking for stay of operation of the order, the K.M.D.A. being the requiring body, praying for stay of operation of the order, in our view, is absolutely redundant. Hence, we refuse the same.

Urgent xerox certified copy of this order be supplied to the applicants.

K. J. Sengupta, J.

I agree.