
(2025) 07 CAL CK 0767

In the Calcutta High Court, Original Side

Case No : MAT Nos. 1248, 1249, 1250 Of 2024, 1483, 1484, 1485 Of 2017

Orissa Metallurgical Industry Private Limited

APPELLANT

Vs

Santanu Santra & Ors

RESPONDENT

Date of Decision : 01-07-2025

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6, 18, 31, 31(1)

Citation : (2025) 07 CAL CK 0767

Hon'ble Judges : Debangsu Basak, J;Prasenjit Biswas, J

Bench : Division Bench

Advocate : Saptangshu Basu, Debrup Bhattacharjee, R. N. Ghose, Pritha Ghose, Tonoya Ghose, Rabindra Narayan Dutta, Hare Krishna Halder, Rabindranath Mahato, Aritra Shankar Ray, Pradeep Kumar Roy, Ankit Sureka, Biplab Das, Partha Sarathi Pal

Final Decision : Allowed

Judgement

Debangsu Basak, J

1. Six appeals are taken up for analogous hearing as the issues raised are same and/or similar.
2. All appeals revolve around acquisition proceedings undertaken for the purpose of setting up Telecon Industrial Unit.
3. Three sets of writ petitions were filed before the learned Single Judge which resulted in the present six appeals under consideration.
4. MAT 1248 of 2024 is at the behest of the beneficiary of the acquisition proceedings while MAT 1483 of 2017 is at the behest of the State of West Bengal and its functionaries. Both are directed against the order dated January 24, 2017 passed in W.P. 21821 (W) of 2016.
5. MAT 1249 of 2024 is at the behest of the beneficiary of the acquisition proceedings while MAT 1485 of 2017 is at the behest of the State and its

functionaries and directed against the order dated January 24, 2017 passed in W.P. 21816 (W) of 2016.

6. Similarly, MAT 1250 of 2024 is at the behest of the beneficiary of the acquisition proceedings while MAT 1484 of 2017 is at the behest of the State and its functionaries and directed against the order dated January 24, 2017 passed in W.P. 21810 (W) of 2016.

7. Beneficiaries of the acquisition proceedings were not parties to the three sets of writ petitions. Claiming to be aggrieved by the orders passed in three sets of writ petitions they sought leave to appeal which was granted. Delay in making and filing the appeals were condoned.

8. Learned advocate appearing for the State of West Bengal refers to the impugned order and submits that, learned Single Judge, after holding that possession of the plots was taken by the State and that, award was made, erred in directing invocation of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. He relies upon (2020) 8 Supreme Court Cases 129 [Indore Development Authority (Lapse-5) versus Manoharlal and others] submits that, since, the tests laid down in such decisions stand satisfied. In the facts and circumstances of the present case, the acquisition proceedings cannot be held to be lapsed. Learned Single Judge erred in directing invocation of the Act of 2013.

9. Learned advocate appearing for the State relies upon a list of dates as also the pleadings in the writ petition and submits that, the present writ petition is a second challenge to the acquisition proceedings. The first challenge of the acquisition proceedings at the behest of the writ petitioners where they challenged the legality, validity and sufficiency of notices issued under the Land Acquisition Act, 1894, failed. In the present set of challenge the writ petitioner is claiming invocation of Section 18 of the Act of 1894. He submits that, in such context, learned Single Judge , erred in holding that, the acquisition proceedings stood lapsed.

10. Learned Senior Advocate appearing for the beneficiary submits that, the land was validly acquired by the State. In the acquisition proceedings possession of the land was taken. An award was published.

Compensation awarded was tendered to the writ petitioners. Upon their refusal to accept the compensation awarded the same was deposited with the treasury. He contends that, the learned Single Judge erred in holding that, acquisition proceeding under the Act of 1894 lapsed. He also refers to the ratio laid down in the Indore Development Authority (Lapse-5) (Supra) in this regard.

11. Learned Senior Advocate appearing for the beneficiary submits that, writ petitioners were well aware that the beneficiary received possession of the land concerned. In this regard, he draws the attention of the Court to the documents that the State produced before learned Single Judge with regard to possession as

also the documents which were produced before the Division Bench. He submits that, the impugned order should be set aside.

12. Learned advocate appearing for the writ petitioners submits that, neither was possession taken from the writ petitioner nor was payment of compensation made to them. In support of the contention that, possession was not taken from the writ petitioners, he draws the attention of the Court to the document which State produced as the document of possession. He submits that, such document of possession does not bear the signature of any of the writ petitioners. He submits that, the document, is a paper transaction between the acquiring body and the person to whom the possession was allegedly made over. He relies upon various paragraphs in Indore Development Authority (Lapse-5) (Supra) in support of his contention that a paper transaction relating to possession is of no consequence.

13. Learned advocate appearing for the writ petitioners submits that, admittedly, the writ petitioner did not receive compensation. Therefore, he submits that, on the twine test of Indore Development Authority (Lapse-5) (Supra) the acquisition proceedings must be held and rightly so held, by the learned Single Judge to be lapsed. Consequently, the direction contained in the impugned order with regard to the lapse of the acquisition proceedings and initiation of a proceeding under the Act of 2013 are correct.

14. In response to the query of the Court as to the right of the writ petitioners to be allowed to canvas the issue of no possession being taken from them and no compensation of money in terms of the award made over to the writ petitioners, in light of the findings returned by the learned Single Judge as recorded in the impugned order as also the basis of the writ petition, learned advocate appearing for the writ petitioners relies upon (2003) 9 Supreme Court Cases 606 (Banarsi And Others versus Ram Phal). He submits that that, a plaintiff in a suit, obtaining a decree in his favour is entitled to assail any finding, which the Court passing the decree made, in an appeal. In this regard, he draws the attention of the Court to the paragraphs 10 and 11 of such decision.

15. Relying upon (2007) 3 Calcutta High Court Notes 708 (State of West Bengal v. Gopal Krishna Das Adhikary) learned advocate appearing for the writ petitioners submits that, where compensation amount is not deposited, then, the only course open to the State was to deposit the amount in Court.

16. In response to a query of the Court, learned advocate appearing for the State submits that, the amount declared by the award stood deposited with the treasury at the relevant point of time.

17. As noted above, there were two sets of writ petitions at the behest of the writ petitioners. In the first set of writ petitions, the writ petitioners assailed notices under Section 4 and 6 of the Act of 1894. Challenge to such notices failed.

18. Thereafter, the writ petitioners filed the fresh writ petitions complaining of

inaction so far as provisions of Section 18 of the Act of 1894 is concerned.

19. By dint of the failure in the first set of writ petition assailing the notices under Sections 4 and 6 of the Act of 1894 and by reason of the writ petitioners now seeking invocation of Section 18 of the Act of 1894 with regard to the acquisition proceedings, we are not minded to allow the writ petitioners to rake up the issue of possession not being taken or no compensation award being passed or paid to them in the present proceedings on the principles of res judicata. Decision in the first set of writ petitions binds the parties before on such aspects.

20. The impugned order in the three sets of writ petitions were passed on a date prior to the delivery of Indore Development Authority (Lapse-5) (Supra). Last paragraph of such judgment is as follows:-

"366. In view of the aforesaid discussion, we answer the questions as under:

366.1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1-1-2014, the date of commencement of the 2013 Act, there is no lapse of proceedings. Compensation has to be determined under the provisions of the 2013 Act.

366.2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the 2013 Act under the 1894 Act as if it has not been repealed.

366.3. The word "or" used in Section 24(2) between possession and compensation has to be read as "nor" or as "and". The deemed lapse of land acquisition proceedings under Section 24(2) of the 2013 Act takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

366.4. The expression "paid" in the main part of Section 24(2) of the 2013 Act does not include a deposit of compensation in court. The consequence of non-deposit is provided in the proviso to Section 24(2) in case it has not been deposited with respect to majority of landholdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act. In case the obligation under Section 31 of the Land Acquisition Act, 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the 2013 Act has to be paid to the "landowners" as on the date of notification for land acquisition under

Section 4 of the 1894 Act.

366.5. In case a person has been tendered the compensation as provided under Section 31(1) of the 1894 Act, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). The landowners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the 2013 Act.

366.6. The proviso to Section 24(2) of the 2013 Act is to be treated as part of Section 24(2), not part of Section 24(1)(b).

366.7. The mode of taking possession under the 1894 Act and as contemplated under Section 24(2) is by drawing of inquest report/memorandum. Once award has been passed on taking possession under Section 16 of the 1894 Act, the land vests in State there is no divesting provided under Section 24(2) of the 2013 Act, as once possession has been taken there is no lapse under Section 24(2).

366.8. The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the 2013 Act came into force, in a proceeding for land acquisition pending with the authority concerned as on 1-1-2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.

366.9. Section 24(2) of the 2013 Act does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the 2013 Act i.e. 1-1-2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition."

21. As noted above, it is not available to the writ petitioners to question the so-called lack of possession being taken and the so-called lack of award being published or compensation paid, therefore, the paragraphs relating to the manner and mode of taking possession as deliberated upon in Indore Development Authority (Lapse-5) (Supra) are of no relevance.

22. In the facts and circumstances of the present case, possession of the land was taken from the writ petitioners. The feigned ignorance of the same in these set of writ petitions must be contrasted with their failure in the earlier round of litigation. Therefore, such an issue is *res judicata* at least between the writ petitioners and the State.

23. The writ petition in which the impugned order was passed speaks of inaction under Section 18 of the Act of 1894. That pre-supposes that there subsists an

award. Once that is accepted by the writ petitioners themselves and after conclusive finding by a competent Court between the same writ petitioners and the State as to possession, the ratio of Indore Development Authority (Lapse-5) (Supra) stands attracted. Therefore, the acquisition proceedings did not stand lapse.

24. Since, the acquisition proceedings did not stand lapsed, the direction contained in the impugned order of the learned Single Judge, regarding invocation of the Act of 2013 cannot be sustained. Consequently, direction issued by the learned Single Judge after holding that the acquisition proceedings stand lapsed also cannot be sustained. In such context, all such directions consequent upon the learned Single Judge holding that the acquisition proceedings stood lapsed are set aside.

25. MAT 1248 of 2024, MAT 1483 of 2017, MAT 1249 of 2024, MAT 1485 of 2017, MAT 1250 of 2024 and MAT 1484 of 2017 are allowed without any order as to costs. All connected applications stand disposed of.