

(2011) 06 CAL CK 0084

In the Calcutta High Court

Case No : F.M.A. No. 486 of 2007 and F.M.A. No. 90 of 2009

State of West Bengal

APPELLANT

Vs

Sabita Mondal
 Samir Kumar Das Vs State of West Bengal

RESPONDENT

Date of Decision : 17-06-2011

Acts Referred:

Calcutta Municipal Act, 1951 — Section 5(11)
Land Acquisition (West Bengal Amendment) Act, 1997 — Section 9, 9(3B)
Land Acquisition Act, 1894 — Section 11, 18, 23(1), 23(2), 31
West Bengal Land (Requisition and Acquisition) Act, 1948 — Section 1(4), 4(1), 7, 7A

Citation : AIR 2012 Cal 47 : (2011) 3 CHN 555

Hon'ble Judges : Sambuddha Chakrabarti, J; Bhaskar Bhattacharya, J; Aniruddha Bose, J

Bench : Full Bench

Advocate : Prasenjit Basu, Ziaul Islam, in FMA 486 of 2007; K.M. Nabi for the Appellant in FMA 798 of 2007, Ziaul Islam for the Appellant in FMA 41 of 2008; Debayan Bera and Swapan Kumar Kar for the Appellant in FMA 90 of 2009, for the Appellant; Debayan Bera, Swapan Kumar Kar for the Respondents in FMA 486 of 2007; Debayan Bera, Sakti Prasad Chakrabarti for the Respondent in FMA 798 of 2007; Bidyut Ray, Sakti Prasad Chakrabarti for the Respondent in FMA 41 of 2008 and Mr. Sumitra Dasgupta, Wasef Ali Mondal for the Respondent in FMA 90 of 2009, for the Respondent

Judgement

Bhaskar Bhattacharya, J.—Two different Benches of this Court having taken a view contrary to the one earlier taken by another Division Bench of this Court in the case of State of West Bengal vs. Soumendra Mohan Dey, reported in ILR 2003 Cal 410, these four matters have been assigned to us by the Hon'ble Chief Justice.

2. The first three cases have been referred by a Division Bench consisting of Ashim Kumar Banerjee and Tapas Kumar Giri, JJ., while the fourth matter has been referred by another Division Bench of Ashim Kumar Banerjee and Prasenjit Mandal, JJ.

3. The facts giving rise to filing of these references may be summed up separately:

F.M.A. No. 486 of 2007

State of West Bengal

vs.

Sabita Mondal & Ors.

4. This appeal is directed against the order dated January 16, 2002 passed by Justice Dilip Kumar Seth in W.P. No. 13189 (W) of 2001. By the said order, His Lordship held that in view of the decision in W.P. No. 17107 (W) of 2000 (Sabitri Devi & Ors. vs. State of West Bengal & Ors.), the notice issued u/s 9(3B) of the Land Acquisition (West Bengal Amendment) Act, 1997 should be treated as one u/s 9(3A) and the compensation should be made accordingly.

5. In this case, the possession of the property was taken in the year 1967 under the provisions of the West Bengal Land (Requisition and Acquisition) Act, 1948 (West Bengal Act II of 1948). Notification u/s 4(1a) of the said Act was published on January 10, 1981. No award was declared u/s 7 of the said Act on or before March 31, 1995. Subsequently, a notice was issued u/s 9(3B) of the Land Acquisition (West Bengal Amendment) Act, 1997 in the year 2000 intimating that the compensation would be assessed on the basis of the value of the land as on January 10, 1981 i.e. the date of reference for the purpose of determining the value of the land. The said notice was challenged in the writ-petition.

F.M.A. No. 798 of 2007

State of West Bengal & Ors.

vs.

Sabitri Devi & Ors.

6. This appeal is directed against the order dated December 24, 2001 passed by Justice Dilip Kumar Seth in W.P. No. 17107 (W) of 2000 (Sabitri Devi & Ors. vs. State of West Bengal & Ors.). By the said order, His Lordship held that the notice u/s 4(1a) of the West Bengal Land (Requisition and Acquisition) Act, 1948 (West Bengal Act II of 1948) was issued two years before 31st March, 1994 but the award was not declared on or before 31st March, 1995 and as such, the notice should lapse by reason of insertion of section 7A in the Act of 1948 and the notices u/s 4(1a) which survived on March 31, 1997 would not lapse. His Lordship further held that in the cases where the notices u/s 4(1a) of the 1948 Act stood lapsed on 31st March, 1997, the provisions of section 9(3B) of the Land Acquisition (West Bengal Amendment) Act, 1997 would not be attracted and it would be attracted only to the cases where the notices u/s 4(1a) of the 1948 Act survived on 31st March, 1997 and in all other cases, section 9(3A) of the Land Acquisition Act, 1894 would apply. Accordingly, His Lordship held that in

the facts and circumstances of the case, the notice u/s 4(1a) of 1948 Act having lapsed before 31st March, 1997, the provisions of section 9(3B) of Land Acquisition Act, 1894 of the West Bengal amendment was not applicable and the compensation was to be calculated on the basis of notice u/s 9(3A) of the Land Acquisition Act 1894 as was issued. His Lordship quashed the notice u/s 9(3B) of 1894 Act.

7. In this case, the possession of the property was taken in the year 1975-76 under the West Bengal Act II of 1948. Notice u/s 4(1a) of 1948 Act was published on 7th March, 1981. No award was declared u/s 7 of the said Act on or before 31st March, 1995. Subsequently, a notice u/s 9(3A) was issued on 18.3.1999. Thereafter, another notice u/s 9(3B) was issued on 17.8.2000. The writ-petition was filed challenging the said notice u/s 9(3B) dated August 17, 2000 and for quashing the said notice. In the writ-petition, the vires of first proviso to section 9(3B) of the Land Acquisition (West Bengal Amendment) Act, 1997 was challenged and prayer was also made in the writ-petition to that effect.

F.M.A. No. 41 of 2008

State of West Bengal & Ors.

vs.

Nur Islam & Ors.

8. This appeal is directed against the order dated January 16, 2002 passed by Justice Dilip Kumar Seth in W.P. No. 12353 (W) of 2001. By the said order, His Lordship held that in view of the decision in W.P. No. 17107 (W) of 2000 (Sabitri Devi & Ors. vs. State of West Bengal & Ors.), the notice issued u/s 9(3B) of the Land Acquisition (West Bengal Amendment) Act, 1997 should be treated as one u/s 9(3A) and the compensation was to be calculated accordingly.

9. In this case, the possession of the property was taken in the year 1979 under the provisions of the West Bengal Land (Requisition and Acquisition) Act, 1948 (West Bengal Act II of 1948). Notice u/s 4(1a) of the said Act was published on August 1, 1983. No award was declared u/s 7 of the said Act on or before March 31, 1995. Subsequently, a notice was issued u/s 9(3B) of the Land Acquisition (West Bengal Amendment) Act, 1997 on February 14, 2000 intimating that compensation would be assessed on the basis of the value of the land as on August 1, 1983. In other words, the date of reference for the purpose of determining the value of the land should be August 10, 1981. The said notice was challenged in the writ-petition.

F.M.A. No. 90 of 2009

Samir Kumar Das & Ors.

vs.

State of West Bengal & Ors.

10. This appeal is directed against the order dated August 29, 2000 passed by Justice Dilip Kumar Seth in W.P. No. 20097(W) of 1999. His Lordship held that the remedy of the petitioner lay u/s 18 of the Land Acquisition Act, 1894 and directed the petitioner to approach the Collector for the said purpose.

11. In this case, the property was requisitioned under the West Bengal Act II of 1948 and possession of the property was taken on November 29, 1977 and November 30, 1977. It was contended that the notice published u/s 4(1a) of the West Bengal Land (Requisition and Acquisition) Act, 1948 (West Bengal Act 2 of 1948) on or before 31st March, 1992 had lapsed by reason of insertion of section 7A in 1948 Act as the award was not declared on or before 31st March, 1995 and accordingly, the petitioners were entitled to get compensation on the basis of section 9(3A) of the Land Acquisition (West Bengal Amendment) Act, 1997. In this case, a notice u/s 9(3B) of the Land Acquisition (West Bengal Amendment) Act, 1997 was issued and an objection was filed challenging the said notice issued u/s 9(3B) of the Land Acquisition (West Bengal Amendment) Act, 1997 and it was contended that the Collector could not resort to section 9(3B) of the Land Acquisition (West Bengal Amendment) Act, 1997 and on the other hand, ought to have resorted to section 9(3A) of the Land Acquisition (West Bengal Amendment) Act, 1997 for assessment of compensation. In this case, the respondent filed an affidavit-in opposition annexing the copy of the award. From the copy of the award and also from the statements made in paragraph 6 of the affidavit-in-opposition, it would appear that it was the case of the Government that notification u/s 4(1a) of West Bengal Act II of 1948 was not available on the record. The copy of the award also indicated that there was no mentioning about the date of publication of notification u/s 4(1a) in the award. Award was declared on September 23, 1999.

12. In the writ-petition, a point was taken that the notice published u/s 4(1a) stood lapsed by operation of law. So, the case would be guided by section 9(3A) and not by section 9(3B). The petitioners also prayed for quashing of the notice issued u/s 9(3B). This case was decided prior to the decision of Sabitri Devi's case which was decided on December 24, 2001. Accordingly, the points involved in this case were not considered by Justice Dilip Kumar Seth from proper perspective. So, this case would also be governed by the decision of Sabitri Devi's case. The notice u/s 9(3B) should be treated as one u/s 9(3A) and the compensation should be determined accordingly.

13. Therefore, in all these matters, the question that arises for determination is that if no award was passed u/s 7A of the West Bengal Land (Requisition and Acquisition) Act, 1948 (West Bengal Act II of 1948) as amended by West Bengal Act XXV of 1996 within the period of two years before the commencement of West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1994, whether by issuing a notice under sub-section (3B) of section 9 of the Land Acquisition (West Bengal Amendment) Act, 1997, the lapsed notices earlier issued u/s 4(1a) of the Act 2 of 1948 can be revived.

14. In order to appreciate the aforesaid question, it will be profitable to refer to some of the relevant provisions of the 1948 Act as well as the Land Acquisition (West Bengal) Amendment Act, 1997 which are quoted below:

3. Power to requisition.-(1) If the State Government is of the opinion that it is necessary so to do for maintaining supplies and services essential to the life of the community (or for increasing employment opportunities for the people by establishing commercial estates and industrial estates in different areas) or for providing proper facilities for transport, communication, irrigation or drainage, or for the creation of better living conditions in rural or urban areas," not being an industrial or other areas excluded by the State Government by a notification in this behalf, by the construction or re-construction of dwelling places in such areas (or for purposes connected therewith or incidental thereto), the State Government may, by order in writing, requisition any land and may make such further orders as appear to it to be necessary or expedient in connection with the requisitioning:

Provided that no land used for purpose of religious worship or used by an educational or charitable institution shall be requisitioned under this section.

(1A) A Collector of a district, (an Additional District Magistrate or the First Land Acquisition Collector, Calcutta,) when authorized by the State Government in this behalf, may exercise within his jurisdiction the powers conferred by sub-section (1),

(2) An order under sub-section (1) shall be served in the prescribed manner on the owner of the land and where the order relates to land in occupation (of an occupier, not being the owner of the land, also on such occupier),

(3) If such person fails to comply with an order made under subsection (1) the Collector or any person authorized by him in writing in this behalf shall execute the order in such manner as he considers expedient and may, -

(a) if he is a Magistrate, enforce the delivery of possession of the land in respect of which the order has been made to himself, or

(b) if he is not a Magistrate, apply to a Magistrate or, in Calcutta as defined in clause (11) of section 5 of the Calcutta Municipal Act, 1951, to the Commissioner of Police, and such Magistrate or Commissioner, as the case may be, shall enforce the delivery of possession of such land to him.

4. Acquisition of land.-(1) Where any land has been requisitioned u/s 3, the State Government may use or deal with such land for any of the purposes referred to in sub-section (1) of section 3 as may appear to it to be expedient.

(1a) The State Government may acquire any land requisitioned u/s 3 by publishing a notice in the Official Gazette that such land is required for a public purpose referred to in sub-section (1) of section 3.

(2) Where a notice as aforesaid is published in the Official Gazette, the

requisitioned land shall, on and from the beginning of the day on which the notice is so published, vest absolutely in the (State) Government free from all encumbrances and the period of requisition of such land shall end.

7. Compensation.-(1) Whenever any land is acquired u/s 4 there shall be paid (to every person interested) compensation the amount of which shall be determined by the Collector in the manner and in accordance with the principles set out in sub-section (1) of section 23 of the Land Acquisition Act, 1894 (so far as they may be applicable):

Provided that the market value referred to in clause first of sub-section (1) of section 23 of said Act shall, in respect of any land acquired under this Act, be deemed to be the market value of such land on the date of publication of the notice referred to in (sub-section (1a) of section 4).

Provided further that in respect of any land in Calcutta which, immediately before the 1st day of January, 1964, constituted a bustee as defined in clause (10) of section 5 of the Calcutta Municipal Act, 1951, the amount of compensation to be paid on account of acquisition to the persons interested shall be determined in the manner and in accordance with the principles set out in sub-section (1) of section 7 of the Calcutta Slum Clearance and Rehabilitation of Slum-dwellers Act, 1958, so far as they may be applicable.

(2)(a) When the compensation has been determined u/s (1) the Collector shall make an award in accordance with the principles set out in section 11 of the Land Acquisition Act, 1894, (and the amount referred to in sub-section (2) and section 23 of that Act, shall also be included in the award):

Provided that interest at the rate of six per centum per annum on the amount of compensation under the award from the date of the publication of the notice under sub-section (1a) of section 4 until payment shall be included in the amount payable under the award.

(aa)(i) Such award shall be filed in the Collector's Office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested in the land, whether they have respectively appeared before the Collector or not of the true area and value of the land, and the apportionment of the compensation among the persons interested;

(ii) the Collector shall give in the prescribed manner immediate notice of his award to such of the persons interested in the land as are not present personally or by their representatives when the award is made.

(b) Upon an award being made under clause (a), the Collector shall proceed to make payment in accordance with the provisions of sections 31 to 33 of the Land Acquisition Act, 1894, so far as they may be applicable.

(3) Where any land is requisitioned u/s 3, there shall be paid to every person interested (compensation), in respect of

(a) the requisition of such land; and

(b) any damage done during the period of requisition to such land other than what may have been sustained by natural causes.

(4) The principle to be followed in determining compensation under sub-section (3) shall be as follows, namely:

(i) where the Collector and the person interested agree as to the compensation, the Collector shall make an award ordering payment of the agreed compensation;

(ii) where the person interested cannot be traced or does not appear before the Collector when called upon to be present for the purpose of the determination of the compensation, such amount shall be determined as compensation as appears reasonable to the Collector having regard to the facts and circumstances of the case and the Collector shall make an award ordering payment of the compensation so determined;

(iii) where there is any disagreement between the Collector and the person interested, the compensation payable shall be the amount determined by the Court on reference made by the Collector under clause (b) of sub-section (1) of section 8.

West Bengal Act XIV of 1994

THE WEST BENGAL LAND (REQUISITION AND ACQUISITION) (AMENDMENT) ACT, 1994.

[Passed by the West Bengal Legislature.]

[Assent of the President of India was first published in the Calcutta Gazette, Extraordinary, of the 31st March, 1994.]

An Act to amend the West Bengal Land (Requisition and Acquisition) Act, 1948, as re-enacted by the West Bengal Land (Requisition and Acquisition) Re-enacting Act, 1977.

WHEREAS it is expedient to amend the West Bengal Land (Requisition and Acquisition) Act, 1948, as re-enacted by the West Bengal Land (Requisition and Acquisition) Re-enacting Act, 1977, for the purposes and in the manner hereinafter appearing;

It is hereby enacted in the Forty-fifth Year of the Republic of India, by the Legislature of West Bengal, as follows:-

1. Short title.-This Act may be called the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1994.

2. Amendment of section 1 of West Bengal Act 2 of 1948.- In Sub-section (4) of section 1 of the West Bengal Land (Requisition and Acquisition) Act, 1948 (hereinafter referred to as the principal Act) as re-enacted by the West Bengal

Land (Requisition and Acquisition) Reenacting Act, 1977, for the words, figures and letters "the 31st day of March, 1994," the words, figures and letters "the 31st day of March, 1997," shall be substituted,

3. Omission section 3.-section 3 of the principal Act (hereinafter referred to as the said section) shall be omitted with effect from the 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, 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 any reference to the said section in any other provision of the principal Act shall be constituted as a reference to the said section as if the said section had not been so omitted.

West Bengal Act XXV of 1996

THE WEST BENGAL LAND (REQUISITION AND ACQUISITION) (AMENDMENT) ACT, 1996.

[Passed by the West Bengal Legislature]

[Assent of the President of India was first published in the Calcutta Gazette, Extraordinary of the 8th October, 1996.]

An Act to amend the West Bengal Land (Requisition and Acquisition) Act, 1948 as re-enacted by the West Bengal Land (Requisition and Acquisition) Re-enacting Act, 1977

WHEREAS it is expedient to amend the West Bengal Land (Requisition and Acquisition) Act, 1948, as re-enacted by the West Bengal Land (Requisition and Acquisition) Re-enacting Act, 1977 for the purposes and in the manner hereinafter appearing;

It is hereby enacted in the Forty-seventh Year of the Republic of India, by the Legislature of West Bengal, as follows:

1. Short title of commencement.-(1) This Act may be called the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1996.

(2) It shall be deemed to have come into force on the 1st day of April, 1994.

2. Amendment of section 1 of West Bengal Act 2 of 1948.-In section 7 of the

West Bengal (Requisition and Acquisition) Act, 1948 (hereinafter referred to as the principal Act) as re-enacted by the West Bengal Land (Requisition and Acquisition) Re-enacting Act, 1977,

(1) in sub-section (1),-

(a) for the words, figures and brackets "in sub-section (1) of section 23" the words, figures, letter and brackets "in sub-sections (1), (1A) and (2) of section 23" shall be substituted, and

(b) the second proviso shall be omitted;

(2) in clause (a) of sub-section (2), for the words, figures and brackets "in sub-section (2) of section 23" the words, figures, letter and brackets "in sub-sections (1), (1A) and (2) of section 23" shall be substituted.

3. Insertion of new section 7A.-After section 7 of the principal Act, the following section shall be inserted:

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, the award shall be made within a period of one year from the date of commencement of that Act (31.3.94).

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.

West Bengal Act VII of 1997

THE LAND ACQUISITION (WEST BENGAL AMENDMENT) ACT, 1997.

[Passed by the West Bengal Legislature]

[Assent of the President of India was first published in the Calcutta Gazette, Extraordinary of the 2nd May, 1997.]

An Act to amend the Land Acquisition Act, 1894, in its application to West Bengal.

WHEREAS it is expedient to amend the Land Acquisition Act, 1894, in its application to West Bengal, for the purposes and in the manner hereinafter appearing:

It is hereby enacted in the Forty-eighth Year of the Republic of India, by the Legislature of West Bengal, as follows:-

1. Short title and commencement.-(1) This Act may be called the Land Acquisition (West Bengal Amendment) Act, 1997.

(2) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

2. Application of the Act.-The Land Acquisition Act, 1894 (hereinafter referred to as the principal Act) shall, in its application to West Bengal, be amended for the purposes and in the manner hereinafter provided.

3. Amendment section 9 of Act 1 of 1894.-In section 9 of the principal Act, after sub-section (3), the following sub-sections shall be inserted :

(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 sub-section (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 (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 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 where such land has, upon the Collector taking possession thereof, already vested absolutely in the Government, free from all encumbrances.

4. Amendment of section 11 A.-In section 11A of the principal Act, after the proviso, the following proviso shall be added:

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.

5. Amendment of section 23.-To sub-section (1A) of section 23 of the principal Act, the following proviso shall be added:

Provided that in respect of the acquisition of the land referred to in sub-section (3A), and sub-section (3B), of section 9, in addition to the market value of the land, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of taking possession of the land to the date of the award of the Collector.

6. Amendment of section 54A.-After section 54 of the principal Act, the following section shall be inserted:

Act to apply to 54A. Save as otherwise-provided in sub requisition of section (3A), and sub-section (3B), of land referred to section 9, the second proviso to section in sub-sections 11A, and the proviso to sub-section (1A) (3A) and (3B) of section 23, the provisions of this Act of section 9 shall apply to the acquisition of the land referred to in subsection (3A), and sub-section (3B), of section 9 mutatis mutandis.

(Emphasis supplied by us)

15. After hearing the learned counsel for the parties and after going through the aforesaid provisions of the two Statutes, we find that by virtue of THE WEST BENGAL LAND (REQUISITION AND ACQUISITION) (AMENDMENT) ACT, 1996, which deemed to have come into force from April 1, 1994, a duty was cast upon the Collector to 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 and if such award is not made within the period as aforesaid, the said notice should lapse. It was further provided therein that in a case where the said notice had been published more than two years before the commencement of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1994, the award should be made within a period of one year from the date of commencement of that Act, the date of commencement of that Act being March 31, 1994.

16. Thus, the effect of the aforesaid Amendment Act of 1996 was that if any notice under sub-section (1a) of section 4 which had already been issued before March 31, 1992, and the Collector had failed to pass any award thereon by March 31, 1995, those notices would lapse; whereas in respect of the notices issued after March 31, 1992, the award must be passed within three years from the date of publication of the notice under sub-section (1a) of section 4 with the further stipulation, that in default of passing of award within the time limit mentioned above, those notifications under sub-section (1a) of section 4 issued

would lapse.

17. It appears that with effect from April 1, 1997, THE LAND ACQUISITION (WEST BENGAL AMENDMENT) ACT, 1997 came into operation and by virtue of that provision, in section 9 of the principal Act, after sub-section (3), two subsections viz. (3A) and (3B) were inserted.

18. By virtue of sub-section (3A), the Collector was given a power to serve notice to the same effect as provided in sub-section 3 of the section 9 of the Principal Act 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, as re-enacted by the West Bengal Land (Requisition and Acquisition) Re-enacting Act, 1977, and, in every such case, the provisions of sub-section (1) of section 4, section 5, section 5A, section 6, section 7 and section 8 of the Act shall be deemed to have been complied with specific proviso 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 and 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. Similarly, Sub-section (3B) authorizes the Collector to serve notices 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 this Act shall be deemed to have been complied with further stipulation 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.

19. 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.

20. 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 dates, have been saved.

21. At this stage, we propose to deal with the decision of the Division Bench in the case of *State of West Bengal vs. Soumendra Mohan Dey* (supra) which was specifically dissented from by the Referring Division Benches.

22. In the abovementioned case, three plots measuring 0.67 acre were first requisitioned under the Act of 1948. Thereafter, a notification u/s 4(1a) of the Act was published on August 9, 1982. The question before the Division Bench was what should be the relevant date for determination of the compensation. The following observations of the Division Bench are relevant and quoted below:

It is very unfortunate that the State has taken a very casual attitude after requisitioning and acquiring the property. They have not taken care to bring the proceedings to its logical conclusion and allowed to prolong the proceedings resulting in great hardship to the land holder and depriving the land holder from using his land. The Act of 1994 extended the life of Act II of 1948 but the Government after realizing the agony of the people realized that this kind of proceedings should come to an end. Therefore, by the amending Act of 1996 section 7A was introduced to Act II of 1948 where a period was fixed for making the award. Our attention has been drawn to some inconsistency in proviso to section 7A inserted by the 1996 Amendment. It is provided that the Collector shall make an award under sub-section (2) of section 7 within the period of three years from the date of publication of the notice in the Official Gazette under subs, (1a) of section 4 and if such award is not made within the period as aforesaid, the said notice shall lapse. Then in proviso to section 7A it was 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 said award shall be made within a period of one year from the date of commencement of "that" Act. The expression "that" here does not mean the Act of 1994 because if that is to be taken then the proviso will be totally unworkable because this Amending Act of 1996 has to be come into effect from October 8, 1996 and the proceedings have to be completed within one year from that Act, that is the Act of 1994 and that will make this proviso redundant as the period of one year shall stand expired in 1995 from the Act of 1994. Therefore, the expression "that" here means the Amending Act of 1996 and the idea was that the proceedings should come to an end where notice has been published within one year from the date of commencement of the Act of 1996 and that one year has to be counted from October 8, 1996, that is, it should be over by October 7, 1997 and if it is not over within October 7, 1997 then proceedings should lapse on that count.

23. With great respect to the said Division Bench, we are unable to accept the above interpretation of the Amendment Act of 1996. Although the said Act was published in Calcutta Gazette on October 8, 1996, the Division Bench totally

overlooked that in Sub-section (2) of section 1 of that very Amending Act, it was specifically provided that the said Amending Act should be deemed to have come into force on April 1, 1994. Moreover, after the proviso to section 7A, the date "(31.3.1994)" was specifically mentioned after the word "that Act" which totally escaped the notice of the said Division Bench as would appear from the quotation of the said proviso. Thus, there is no scope of interpreting the words "that Act" as the Act of 1996 by ignoring the date of commencement of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1994 specifically mentioned at the end of the proviso. Where the intention of the legislature was clear, there is no scope of ignoring the specific language employed in the Statute. 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. We, thus, find that the learned Referring Division Benches of this court rightly refused to follow the view taken in the case of *State of West Bengal vs. Soumendra Mohan Dey* (supra).

24. In view of our aforesaid findings, we dismiss the first three appeals filed by the State and affirm the order passed by the learned Single Judge. So far as the fourth matter viz. F.M.A. No. 90 of 2009 (*Samir Kumar Das & Ors. vs. State of West Bengal & Ors.*) is concerned, we give an opportunity to the State to find out the alleged notice under sub-section (1a) of section 4 of the Act. If it appears that such a notice was issued prior to March 31, 1992, the same should be treated to have lapsed and the State shall give fresh notice u/s 9(3A) of the Act and will proceed accordingly. If it appears that by following the principles laid down by us in these cases, the notice under sub-section (1a) of section 4 has not lapsed the compensation should be calculated on the basis of the valuation as on that date of such notice. At any rate, fresh award should be passed in accordance with law within six months from today.

25. All the Mandamus-Appeals are thus disposed of.

26. In the facts and circumstances, there will be, however, no order as to costs.