



IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

WPA 28796 of 2008

Jibankrishna Mondal (since deceased)

Sushanta Mondal & Ors.

Versus

The State of West Bengal & Ors.

For the Petitioners : Mr. Amit Kumar Pan, Adv.
Ms. Tanusri Santra, Adv.

Heard on : 06.04.2026

Judgment on : 30.04.2026

Ajay Kumar Gupta, J.:

1. The predecessor-in-interest of petitioner nos. 1(a) to 1(g) was the owners of plot nos. 1120 and 1607, measuring an area of about 0.79 and 0.06 acres of land, respectively. Petitioner no. 2 was the owner of plot nos. 1218, 1239 and 6996, measuring an area of about 0.05, 0.20 and 0.41 acres of land respectively, and petitioner no. 3 was the owner of plot nos. 7051, 7043, 1623 and 1207 measuring an area of



about 0.35, 0.24, 0.36 and 0.03 acres of land respectively, situated at Mouza – Butia, J.L. No. 33, under Police Station – Budge Budge, District – South 24 Parganas.

- 2.** The aforesaid lands were requisitioned, including other vast areas of land, and possession thereof was taken over on 19th January, 1971, in connection with the Charial Basin Drainage Scheme after initiation of a proceeding under the West Bengal Land (Requisition & Acquisition) Act, 1948 (in short, the said Act, 1948).
- 3.** The land was acquired under Section 4(1a) of the said Act, 1948, upon publication of a Notification being No.7242 L. A. (PW) dated 19th March, 1975, in the Calcutta Gazette and accordingly notices under Section 5(3) of the said Act, 1948, were issued to the land owners.
- 4.** During the pendency of the proceedings initiated by the authority, the West Bengal Land (Requisition and Acquisition) Amendment Act, 1994, came into force and the life of the aforesaid Act, 1948, was extended till 31.03.1997.
- 5.** Subsequently, Section 7A was inserted after Section 7 of the Principal Act by virtue of Section 3 of the amending Act, 1948.
- 6.** The West Bengal Land (Requisition and Acquisition) Act, 1948, ultimately lapsed. The Government of West Bengal, Land and Land Reforms Department issued a Notification in Calcutta Gazette on



2.05.1997, notifying that the Land Acquisition (West Bengal Amendment) Act, 1997 would be deemed to have come into force on the 1st day of April, 1997. Section 9 of the Principal Act, namely Act 1 of 1894, was amended by which sub-sections (3A) and (3B) were inserted after section 9(3).

- 7.** The respondent authorities sought to proceed to declare the Award on the basis of the earlier notice issued under Section 4(1a) of the repealed Act of 1948, although the said Act was declared repealed; as such, the writ petitioners have filed this instant writ petition seeking relief, *inter alia*, as follows: -

- a) *“a) A Writ in the nature of Mandamus commanding the respondents not to proceed any further on the basis of the notice under Sub-section (1a) of Section-4 of the West Bengal Land (Requisition and Acquisition) Act, 1948 being Notification No. 7242 L.A. (PW) dated 19th March 1975 in the Calcutta Gazette on 19th March 1975 in connection with Case No. LA-II/1 of 1968-69;*
- b) *A writ in the nature of Mandamus commanding the respondents to pay rental compensation as admissible under the law;*
- c) *A writ in the nature of mandamus commanding the respondent authorities to return back the possession of the land in question details of which are given in paragraph – 2 in this petition forthwith;*



- d) *A writ in the nature of mandamus commanding the respondent authorities to pay the occupational charges on and from 1st April 1995 till the date of handing over back the possession of the land in question;*
- e) *A writ in the nature of Certiorari calling upon the respondents to produce and/or caused to be produced relating to the case before this Hon'ble Court to do conscionable justice to the petitioner upon perusing the same;*
- f) *Rule NISI in terms of prayers (a), (b), (c), (d) and (e) above;*
- g) *An order directing the respondents to return back the possession in question pending disposal of the instant application;*
- h) *An order directing the respondents to pay rental compensation as admissible under the law pending disposal of the instant application;*
- i) *An order directing the respondents' authorities to pay the occupational charges on and from 1st April 1995 till the date of handing over back the possession of the land in question pending disposal of this application;*
- j) *An order directing the respondents not to proceed any further on the basis of the notice under Sub-section (1a) of Section-4 of the West Bengal Land (Requisition and Acquisition) Act, 1948 being Notification No. 7242 L.A. (PW) dated 19th March 1975 in the Calcutta Gazette on 19th March 1975 in connection with Case No. LA-II/1 of 1968-69 pending disposal of this application;*
- k) *Ad interim order in terms of prayers (g), (h), (i) and (j) above;*



l) Costs of and incidental to this application be paid by the respondents;

m) Such further order or orders as to Your Lordships may seem fit and proper.”

- 8.** None appears on behalf of the respondents at the time of call, though the case was fixed as a last chance. Hence, the matter was taken up for hearing and disposal in the absence of the respondents.
- 9.** In course of hearing the writ petition, the learned counsel representing the petitioners, on his usual fairness, withdrew several prayers made in the writ petition, and stuck to two of them, which are as follows: -

a) A writ in the nature of Mandamus commanding the respondents to pay rental compensation as admissible under the law from the date of taking over the possession till declaring Award of the acquired land; and

b) A writ in the nature of Mandamus commanding the respondent's authority to declare the Award of the acquired land in view of the amended provisions of law and pay the same to the present writ petitioners together with interest and other additional benefits.



- 10.** Learned counsel appearing on behalf of the petitioners submitted that initially the then Co-ordinate Bench of this Court heard the matter at length and passed the interim order on the following terms: -

“Since the Court is informed by Mr. Pan, learned Advocate for the petitioners that the intricate question of law which has been raised in this writ petition, is now pending for consideration before a Larger Bench of this Hon’ble Court, constituted by the Hon’ble Chief Justice due to difference of opinion expressed on such question of law, by two different Division Benches of this Hon’ble Court, in two different Mandamus Appeals arising out of two different writ petitions, let the hearing of this writ petition stands adjourned sine die.

Liberty is, however, given to the petitioners to take necessary steps for getting this application transferred to the larger Bench taking up such matter so that this application can also be dealt with by the Larger Bench along with the earlier reference.

It is made clear that the proceeding for acquisition of land in question may be continued by the concerned Land Acquisition Collector, but no award will be made in the said acquisition proceeding without the leave of the Court.

The petitioners may also appear in the said land acquisition proceeding without prejudice to their rights and contentions in the writ petition.”

- 11.** It was further submitted that the Larger Bench of this Hon’ble High Court has decided the issue involved in the dissenting orders passed by two different Division Benches, as the intricate issue of law involved in those matters was similar to the present case. In view of the decision of the Large Bench, this writ petition may be disposed of.



- 12.** Learned Counsel for the petitioners has placed reliance on the decision of the Larger Bench in the case of ***State of West Bengal vs. Sabita Mondal***¹ to support his submission that the Award of the acquired lands should be passed, taking into account the amended provision of law since the notice under Section 4(1)(a) of the said Act, 1948, was repealed and lapsed.
- 13.** Having heard the arguments at length on behalf of the petitioners and upon perusal of the Affidavit-in-opposition, and statements of facts filed by the respondent's authority, this Court notes that the present writ petition raises a short but significant issue concerning the legality of continuation of land acquisition proceedings initiated under the West Bengal Land (Requisition and Acquisition) Act, 1948, after the said act lapsed, and the consequential entitlement of the petitioners to compensation.
- 14.** It is undisputed that the possession of the vacant lands of the petitioners, with proper demarcation, was taken over and received by the authority on 19th January, 1971. It is also undisputed that the land was acquired by the concerned respondent authority in respect of the Charial Basin Drainage Scheme in L.A. Case No. L/II/I of

¹ **2011 SCC OnLine Cal 1602**



1968-69 after notice was issued under Section 4(1)(a) of the 1948 Act, on 19.03.1975.

- 15.** It is further revealed from the statement of facts submitted by the concerned respondent that a sum of Rs. 23,16,661/- has been paid to L.A. Collector, South 24 Parganas, Alipore vide Cheque No. 006170 dated 31.03.2009 of Reserve Bank of India, which was received by L.A. Collector, South 24 Parganas, Alipore on 02.04.2009 under Section 9(3B) of the Amendment Act, 1997 and 1999. The tentative date of the award under Act I of 1894 was declared as 18.07.2008.
- 16.** The petitioner no. 1, Jiban Krishna Mondal, expired on 26.03.2019, during the pendency of the writ petition. Thus, his legal heirs have been substituted vide order dated 17.09.2025 in his place.
- 17.** During the pendency of such proceedings, the statutory framework itself underwent substantial changes. The Act of 1948 was amended from time to time and ultimately lapsed, with effect from 31st March, 1997, and the field came to be governed by the amended provisions of the Land Acquisition Act, 1894, as applicable to the State of West Bengal.
- 18.** In the aforesaid backdrop, the principal question that falls for consideration is whether the respondent authorities can be permitted to proceed with the acquisition on the strength of a notification



issued under a statute which has since lapsed, and keep the landowners deprived of both their property and lawful compensation indefinitely.

19. Before entering into the merits of this instant case, it will be pertinent to refer to some of the relevant provisions of the 1948 Act as well as the Land Acquisition (West Bengal) Amendment Act, 1997, set out hereinbelow:

“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 under section 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 under section 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 under section 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 under section (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 under section 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) Re-enacting 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 under section 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 under section 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 under section 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 under section 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 11A.—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 under section 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.”

- 20.** The reliance placed by the petitioners on the decision of the Larger Bench in ***State of West Bengal vs. Sabita Mondal (Supra)*** does not advance their case in the facts of the present matter. The said decision governs situations where acquisition proceedings remained incomplete and no award was declared. In the present case, however, the records indicate that the award has in fact been passed in accordance with the governing statutory provisions.
- 21.** Once it is held that a valid award has been made, the acquisition proceedings cannot be said to be pending or inconclusive. The challenge to the continuation of the acquisition on the ground of the absence of an award, therefore, fails.



22. Sections 24 and 25 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 have been set out herein below: -

24. *On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 22, to the measurements made under section 21, and into the value of the land at the date of the publication of the notification, and into the respective interests of the persons claiming the compensation and rehabilitation and resettlement, shall make an award under his hand of—*

(a) the true area of the land;

(b) the compensation as determined under section 28 along with Rehabilitation and Resettlement award as determined under section 32 and which in his opinion should be allowed for the land; and

(c) the apportionment of the said compensation among all the persons known or believed to be interested in the land, or whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

25. *(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, —*

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation, rehabilitation and resettlement shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of



such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been accepted, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.

- 23.** It is not in dispute that an award was passed in the year 2008. Consequently, Section 25(1)(a) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which applies only where no award has been made, is not attracted.
- 24.** The record goes on to show that possession of the land was taken on 19th January, 1971, thereby excluding the applicability of Section 25(2) on the ground of possession not being taken.
- 25.** Although compensation has not been disbursed to the petitioners, it stands established that the amount was duly determined pursuant to the award and retained with the L.A. Collector due to the pendency of the issue before the Larger Bench. Such retention, being attributable to a bona fide legal impediment, cannot be construed as non-payment within the meaning of Section 25(2).
- 26.** In these circumstances, neither of the conditions under Section 25(2) is satisfied. The acquisition proceedings, therefore, do not lapse, and the provisions of the 2013 Act are inapplicable.



27. In view of the aforesaid discussion, this Court is of the considered opinion that the acquisition proceedings have culminated in a valid award passed in accordance with law, and no ground is made out for interference in exercise of writ jurisdiction.
28. Insofar as the petitioner's prayer with regard to the rental compensation is concerned, a Writ court cannot enter into the process of determination of such compensation since it involves a disputed question of fact, which needs evidence to be led by the parties.
29. If the petitioners are dissatisfied with the compensation amount and/or rental compensation awarded, they shall be at liberty to approach the appropriate forum for the enhancement of the same and/or rental compensation, in accordance with law.
30. Consequently, **WPA 28796 of 2008** stands **allowed** with the above observations without order as to costs. Connected applications, if any, are also, thus, disposed of.
31. Interim order, if any, stands vacated.
32. The respondent no.2 is hereby directed to pay the awarded compensation to the petitioners within 8 weeks from the date of the communication of this judgment in accordance with law after



verifying their identity and entitlement according to their extent of shares in the lands acquired.

- 33.** Parties shall act on the basis of server copies of this Judgment duly downloaded from the official website of the High Court at Calcutta.
- 34.** Urgent Photostat certified copies of this Judgment, if applied for, be supplied to the parties upon compliance of all necessary and legal formalities.

(Ajay Kumar Gupta, J)

P.A.