

04. 22.12.2023
Court No.6
Kole

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

M.A.T. 1181 of 2019

**The State of West Bengal & Ors.
Vs
Mahadeb Khan & Ors.**

For the Appellants : Mr. Susovan Sengupta, Adv.
Mr. Subir Pal, Adv.

For Respondents/writ : Mr. Prasenjit Debnath, Adv,
petitioners Ms. Punam Basu, Adv.
Ms. Pritha Biswas, Adv.

Arijit Banerjee, J. :-

1. This is an appeal against the judgment and order dated September 5, 2018, whereby the writ petition of the respondents herein being W.P. 6705 (W) of 2018, was disposed of by a learned Judge of this Court.

2. In effect, the learned Single Judge directed the State, to pay compensation to the respondents/writ petitioners under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (in short 'the 2013 Act'), for utilizing the land of the respondents/writ petitioners for construction of a public road, without acquiring such land following due process of law.

3. The material undisputed facts of the case are that land of the writ petitioners was requisitioned under Section 3 of the West Bengal Land (Requisition and Acquisition) Act,

1948 (in short the '1948 Act') by way of a notice dated April 26, 1984. Possession of such land was taken by the Government on May 10, 1984.

4. Subsequently, the State Government decided to acquire the said land and issued notice of acquisition dated November 24, 1993, under Section 4 (1a) of 1948 Act.

5. No award was published pursuant to such acquisition notice.

6. The West Bengal Land (Requisition and Acquisition)(Amendment) Act, 1994 came into force on April 1, 1994, whereby the 1948 Act was amended by incorporation of Section 7A therein, which reads as follows:-

“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.

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.”

7. Admittedly no Award was made within three years from the date of the acquisition notice, i.e, November 24, 1993.

8. In its application to the State of West Bengal, Section 9 of the Land Acquisition Act, 1894 (in short the 1894 Act) was amended by incorporating Sub Sections 3-A and 3-B after Sub Section 3, with effect from May 2, 1997. The said newly inserted sub Sections read as follows:-

“(3-A) 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 5-A, 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.

(3-B) 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 (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:

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.”-W.B. Act 7 of 1997, S. 3 (w.e.f.2-5-1997).”

9. A notice under Section 9(3-B) of 1894 Act was issued by the Government. Even thereafter, no Award was made by the Collector. The respondents received no compensation for their land which had been taken over and utilized by the State Government for constructing a public road.

10. In the aforesaid factual scenario, the respondents herein approached the learned Single Judge primarily with the following 2 prayers :

“a) Declaration that the exercise of the respondents purporting to be acquisition of land of the petitioners is arbitrary, illegal and unconstitutional and violative of Articles 14, 21 and 300 A of the Constitution of India;

b) A writ or writs in the nature of Mandamus do issue commanding the respondents to pay the just and appropriate compensation for the damage done by illegal and forcible acquisition of the land of the petitioners;”

11. The learned Judge by a detailed judgment allowed the prayer for compensation directing the State to compensate the writ petitioners in terms of the 2013 Act. The operative portion of the learned Judge’s order reads as follows:-

“To sum up the notice under Section 4(1a) of the temporary Act lapsed on 24th November, 1995 as no award was published within time indicated in Section 7A of the said Act, even the introduction of sub Sections 3A and 3B of Section 9 of the Act 1, 1894 does not save the lapsed notices as held by the Special Bench in case of **Sabitri Devi (supra)**. The notice claimed to have been issued under sub

Section 3B of Section 9 of Act 1, 1894 is void and illegal as it does not extend the period of lapsed notice. Admittedly, the compensation has not been paid as yet and the requisition cannot continue after the expiration of life of the temporary Act. Since, the land of the petitioner has already been utilized for construction of the connector, it will be hardship on the State to revert back the land to the petitioner as the purposes still exist.

The State is thus directed to take steps under 2013 Act within six months from the date of this order and pay the due compensation in accordance with the provisions contained therein within the aforesaid stipulated time.”

12. Being aggrieved, the State respondents in the writ petition have come up by way of this appeal.

13. Learned Advocate for the appellants submitted that the effect of incorporation of Section 9(3-B) into the 1894 Act is, that even if the life of the 1948 Act came to an end on March 31, 1997, the notice published under Section 4(1a) of the 1948 Act survived and the Collector could proceed with the acquisition proceeding under Section 9(3B) of the 1894 Act. He submitted that issuance of notice under Section 9(3B) of the 1894 Act would mean vesting of the land in the State since it would be deemed that the provisions of Sections 4,5, 5A, 6, 7, 8 and 16 of the 1894 Act have been complied with. In this connection, learned Advocate referred to the decision of the Hon'ble Supreme Court in the case of **Satendra Prasad Jain & Ors. v. State of U.P. & Ors., reported at**

1993 (4) SCC 369. Learned Counsel also referred to the decision in the case of **Indore Development Authority v. Manoharlal and Ors. reported at (2020) 8 SCC 129.** Reference was also made to a Full Bench judgment of this Court in the case of the **State of West Bengal v. Sabita Mandal reported at 2011 (3) CHN (CAL) 555** in support of the proposition that the State authorities are empowered to invoke Section 9 (3A) or 9 (3B), of the 1894 Act, as the case may be, to complete acquisition proceedings and hence it cannot be said that the 1948 Act died a natural death upon its term coming to an end.

14. The next submission made by learned Advocate was that where Section 4(1a) of the 1948 Act was invoked, Section 7A of that Act requiring publication of the Award within the prescribed time period, would not apply.

15. The third submission of learned Advocate was that since the acquisition proceeding was not initiated under the 1894 Act, as per Section 24 of the 2013 Act, the provisions of the 2013 Act would not apply in the facts of this case. In this connection, learned Advocate relied on two Division Bench Judgments of this Court rendered respectively in MAT No. 86 of 2016 (**State of West Bengal & Ors. Niladri Chatterjee and Ors.**) and MAT No. 1545 of 2018 (The **State of West Bengal and Ors. v. Sri. Saktipada Saha Chowdhury and Ors.**).

16. Learned Counsel then submitted that the observation of the Full Bench of this Court in the case of **Sabita Mandal**

(supra), to the effect that in respect of notices issued under Section 4(1a) of the 1948 Act, if Award was not made within one year from March 31, 1994, then the notices lapsed, was *per incuriam*. The Full Bench did not take into consideration the relevant provisions of law or the ratio of the decision in Satendra Prasad Jain (*supra*).

17. It was further submitted that the decision of a coordinate Bench of this Court in MAT 1545 of 2018, rendered on April 12, 2022 by a Coordinate Bench of this Court, in MAT 1545 of 2018 (***State of West Bengal & Ors. v. Sakti Pada Saha Chowdhury & Ors.***) is binding on this Bench.

18. The sixth submission made by learned Advocate for the appellants was that Section 6 of the General Clauses Act, applies in the facts and circumstances of this case and therefore the inevitable conclusion is that what is applicable to the various procedures to be undertaken for computation of compensation are those prescribed under, 1894 Act up to the stage of determination of compensation.

19. It was finally submitted that the present writ petition ought to have been dismissed by the learned Judge on the ground of laches and delay alone.

20. Learned Advocate for the respondents/writ petitioners, after recounting the factual background of the case which is the same as we have recorded above, referred to the Full Bench decision of this Court in the case of ***Sabita Mondal (supra)***. He referred to that case in support of his contention

that notices issued under Section 4(1a) of the 1948 Act which lapsed for non-compliance of Section 7A of the Act, could not be revived by invoking Section 9(3B) of the 1894 Act. Learned Counsel also referred to a decision of this Court in the Case of ***Smt. Mandodori Bhakat & Ors. v. State of West Bengal & Ors., reported at AIR 2013 CAL 1.***

21. Learned Advocate submitted that there is apparent difference between Section 11A of the 1894 Act and Section 7A of the 1948 Act. If an Award is not made within the time limit prescribed by Section 7A of the 1948 Act, the notice under Section 4(1a) of the said Act shall lapse. If the vesting is a conditional one and is not of enduring nature, it cannot be protected after lapse of such notice. By virtue of Section 4(1a) of the 1948 Act, possession is not taken as the possession is already with the State under an order of requisition. Therefore, the moment the notice of acquisition lapsed, Possession of the land did not revert back to the owner. It would automatically revive the order of requisition and there was no fetter on the part of the State to issue a fresh notice of acquisition under Section 4(1a) of the 1948 Act and publish an award within the time limit indicated in Section 7A of the Act. Now the position has changed as the 1948 Act has met with its natural death and stands effaced. Even after the notice under Section 4(1a) of the 1948 Act lapsed, the State could have proceeded under Section 9(3A) of the 1894 Act as no time limit is provided for invocation of

such provision. However, now that the 1894 Act stands repealed with effect from January 1, 2014, that avenue is also not open to the State.

22. Learned Advocate also referred to the decision of a Division Bench of this Court in the case of ***The State of West Bengal and Ors. v. Ganesh Samanta reported at (2014) 4 WBLR (Cal) 996***. In particular learned Advocate relied on the following observation of the Court:- "... When the notice lapsed, we cannot hold that the title which was vested with the State by operation of law under Section 4(1a) of the said Act will continue to remain with the State even after the State respondent failed to publish the Award under Section 7A of the said Act, within the statutory period.

23. Learned Advocate then submitted that there is distinction between a temporary Act and a permanent Act. A temporary Act expires after it has operated for the time period for which it was supposed to operate. It stands effaced. A permanent Act, if repealed, normally saves the actions, rights, privileges, proceedings, enquiries already initiated under the provision of that Act. If a temporary Act is repealed before it has operated through the entire time period, Section 6 of the General Clauses Act may apply. But not so, when the temporary Act runs its full tenure and meets with natural death. The moment a temporary Act expires, the proceedings initiated thereunder cannot be continued unless there is express provision which saves those proceedings. In the present case, the notice of

acquisition lapsed as the Award was not made within the time prescribed in Section 7A of the 1948 Act, nor was it resurrected by invocation of Section 9(3A) of the 1894 Act. In this connection learned Advocate relied on the decision of the Hon'ble Supreme Court in the case of ***M/s Fibre Boards Private Limited, Bangalore v. Commissioner of Income Tax, Bangalore, reported at (2015) 10 SCC 333.***

24. Learned Counsel then submitted that the State cannot take advantage of its own wrong by saying that the writ petitioners are guilty of delay and laches. In this connection reference was made to the following decisions:-

(i) ***Ram Chand & Ors. v. Union of India & Ors., reported in 1993 AIR SCW 3479.***

(ii) ***Tukaram Kana Joshi & Ors. v. Maharashtra Industrial Development Corporation & Ors. reported in 2012 AIR SCW 6343.***

(iii) ***Bangalore Development Authority & Anr. v. The State of Karnataka & Ors. reported at CA No(S). 7661-7663 of 2018.***

(iv) ***Haryana State Industrial & Infrastructure Development Corporation Ltd & Ors. v. Mr. Deepak Aggarwal & Ors., reported at SLP (C) Nos. 16631 - 16632/2018.***

25. In the light of the aforesaid submission, learned Advocate for the writ petitioners contended that the State, not being in a position to return the land to the writ petitioners and the State being obliged to compensate the

writ petitioners for the land, the only avenue open to the State is to initiate acquisition proceedings in accordance with law. The only available law presently is the 2013 Act.

26. I have given my anxious consideration to the rival contentions of the parties.

27. To start with, a brief discussion on the 1948 Act may be helpful. The object for which the Act was promulgated will appear from the Preamble to the Act which reads as follows:-

“An Act to provide for the requisition and speedy acquisition of land for certain purposes.

WHEREAS it is expedient to provide for the requisition and speedy acquisition of land for the purposes of maintaining supplies and services essential to the life of the community, increasing employment opportunities for the people by establishing commercial estates and industrial estates in different areas, providing proper facilities for transport, communication, irrigation or drainage and creating better living conditions in urban or rural areas by the construction or reconstruction of dwelling places in such areas or for purposes connected therewith and incidental thereto.”

28. Initially, the 1948 Act provided only for requisition of land. There was no provision in the Act for acquiring such requisitioned land. Section 3(1) of the Act empowered the State Government to requisition any land if the State Government was of the opinion that it was necessary to do so 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 area excluded by the State Government by a notification in this behalf, by the construction or reconstruction of dwelling places in such areas or for purposes connected therewith or incidental thereto.

29. Section 4(1) of the Act as it stood initially, provided that “where any land has been requisitioned under Section 3, the Provincial Government may use or deal with it in such manner as may appear to it to be expedient and may acquire such land by publishing in the Official Gazette, a notice to the effect that the provincial Government has decided to acquire such land in pursuance of this Section”. This sub section was substituted by a new provision which is the present sub Section 1 of Section 4 and Section 4(1a) was incorporated in the 1948 Act, by West Bengal Act 8 of 1954. After the amendment, sub Sections (1) and (1a) of Section 4 read as follows:-

“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.”

Section 4(2) provides that “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.

30. Section 7 of the 1948 Act provided for determination of the compensation amount by the Collector, to be paid to the persons interested in the land acquired under Section 4.

31. Initially there was no time period prescribed in the 1948 Act within which the Collector was required to make an Award under Section 7(2) of the Act. By the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1996, Section 7A was inserted in the 1948 Act. Section 7A has been set out herein above. This amendment was with effect from April 1, 1994.

32. The 1948 Act died its natural death on March 31, 1997. In other words, the life of that Act expired by efflux of time with effect from April 1, 1997.

33. An amendment was brought to the 1894 Act, by the Land Acquisition (West Bengal Amendment) Act, 1997. By that amendment, sub Sections (3A) and (3B) were inserted after sub Section 3 of Section 9 of the 1894 Act in its

application to the State of West Bengal. This was done to complete the process of acquisition initiated under the 1948 but not completed prior to the natural death of that Act with effect from April 1, 1997. Sections 9(3A) and 9(3B) of the 1894 Act have been extracted hereinabove.

34. In the present case, notice of acquisition under Section 4 (1a) of the 1948 Act was served on November 24, 1993. The Award was required to be published within 3 years thereof as per Section 7A of the 1948 Act. Admittedly, no Award was published within that period. The notice of acquisition under Section 4(1a) of the 1948 Act therefore lapsed.

35. Service of notice under Section 9(3B) of the 1894 Act, does not revive a lapsed notice of requisition under Section 4(1a) of the 1948 Act. The Full Bench decision in the case of **Sabita Mandal, (supra)**, clearly says so. To the same effect is a decision of a Coordinate Bench in the case of **Ganesh Samanta (supra)**.

36. In this connection one may note the relevant observations of the Full Bench of our Court in **Sabita Mandal's Case:-**

“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 under Section 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 under Section 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 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 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.”

37. Even after the notice under Section 4(1a) of the 1948 Act lapsed, the government could have revived the acquisition proceedings by serving notice under Section 9 (3A) of the 1894 Act. No time period was prescribed for service of such notice. However, that was not done during the life time of the 1894 Act. That could not be done any further after January 1, 2014, the date with effect from which the 1894 Act stood repealed. The suggestion of learned Advocate for the State that even after repeal of the 1894 Act, in the present case, proceedings could continue under that Act, is completely unacceptable. Such scenario is contemplated only under Section 24(1) (b) of the 2013 Act which is to the effect that in any case of Land Acquisition proceedings initiated under the 1894 Act, where an Award under Section 11 of the said Act has been made, then such proceedings shall continue under the provisions of that Act, as if that Act has not been repealed. In the present case, admittedly no Award was ever made. In any event section 24 of the 2013 Act would not apply since the acquisition proceedings were not initiated under the 1894 Act.

38. In the aforesaid scenario, the only order that could have been passed is the one that has been passed by the learned

Single Judge. The State cannot continue to hold on to the land of the respondents/writ petitioners without paying compensation therefor to the writ petitioners following due process of law.

39. Learned Advocate for the State relied on the decision of the Hon'ble Supreme Court in the case of **Satendra Prasad Jain & Ors. (supra)**. The ratio of that case is that the Government cannot withdraw from acquisition under Section 48 of the 1894 Act once it has taken possession of the land under Section 17 of that Act. When Section 17(1) of the 1894 Act is invoked by reason of urgency, Government takes possession of the land prior to the making of the award under Section 11 and thereupon the owner is divested of the title to the land which then vests in the Government. Section 11A of the 1894 Act does not apply to cases of acquisition under Section 17, i.e., in such cases there is no requirement of an award being made by the Collector within the stipulated time period.

With great respect, the case has no manner of application to the facts of the present case.

40. Learned Advocate for the State also relied on the decision of the Constitution Bench of the Supreme Court in the case of Indore Development Authority, *Supra*. That case also has no relevance to the facts of the present case. Act II of 1948 was not involved in that case.

41. The submission of learned Advocate for the state that where Section 4(1a) of the 1948 Act was invoked, Section 7A

of that Act requiring award to be published within the time period indicated in that Section, would not apply, is completely fallacious and is noted only to be rejected. Section 7A itself refers to Section 4 (1a) and provides that the notice under Section 4(1a) would lapse if award is not made by the Collector within the time period prescribed in Section 7A.

42. Learned Advocate for the State was correct in arguing that Section 24 of the 2013 Act would not apply in the facts of this case since the acquisition proceeding was not initiated under the 1894 Act. However, that does not mean that the provisions for determining compensation as enshrined in the 2013 Act cannot be applied in case of acquisition proceedings initiated under a statute other than the 1894 Act but where such proceedings have lapsed. Section 24 of the 2013 Act basically is a saving Section and saves acquisition proceedings from lapsing to the extent indicated therein, nothing more nothing less.

43. None of the points urged on behalf of the State has any merit.

44. As regards the point of delay or laches on the part of the respondent/writ petitioners, urged by learned Counsel for the State, I can do no better than to reproduce the observations of the Hon'ble Supreme Court in paragraphs 12.12, 12.13, 12.14 in the case of ***Vidya Devi v. The State of Himachal Pradesh and Ors. reported at (2020) 2 SCC 569.***

“12.12. The contention advanced by the State of delay and laches of the Appellant in moving the Court is also liable to be rejected. Delay and laches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the Court. Condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case. It will depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice.

12.13. In a case where the demand for justice is so compelling, a constitutional Court would exercise its jurisdiction with a view to promote justice, and not defeat it.

12.14. In **Tukaram Kana Joshi and Ors. v. M.I.D.C. and Ors., (2013) 1 SCC 353: (2013) 1 SCC (Civ) 491**, this Court while dealing with a similar fact situation, held as follows:

“11. There are authorities which state that delay and laches extinguish the right to put forth a claim. Most of these authorities pertain to service jurisprudence, grant of compensation for a wrong done to them decades ago, recovery of statutory dues, claim for educational facilities and other categories of similar cases, etc. Though, it is true that there are a few authorities that lay down that delay and laches debar a citizen from seeking remedy, even if his fundamental right has been violated, Under Article 32 or 226 of the Constitution, the case at hand deals with a different scenario altogether. The Functionaries of the State took over possession of the land belonging to the Appellants without any sanction of law. The Appellants had asked repeatedly for grant of the benefit of compensation. The State must either comply with the procedure laid down for acquisition, or requisition, or any other permissible statutory mode.”

45. In the case of **Sukh Dutta Ratra v. State of Himachal Pradesh reported at (2022) 7 SCC 508**, the Supreme

Court directed payment of compensation to the appellants who had filed the writ petition after 38 years against the State. In that case, the Supreme Court was also approached after about six years after the order passed by the Himachal Pradesh High Court in the year 2013. Negating the contention advanced on behalf of the State of Himachal Pradesh as to the delay and laches, the Supreme Court held as follows:-

“16. Given the important protection extended to an individual vis-a-vis their private property (embodied earlier in Article 31, and now as a constitutional right in Article 300-A), and the high threshold the State must meet while acquiring land, the question remains - can the State, merely on the ground of delay and laches, evade its legal responsibility towards those from whom private property has been expropriated? In these facts and circumstances, we find this conclusion to be unacceptable, and warranting intervention on the grounds of equity and fairness.

17. When seen holistically, it is apparent that the State's actions, or lack thereof, have in fact compounded the injustice meted out to the appellants and compelled them to approach this court, albeit belatedly. The initiation of acquisition proceedings initially in the 1990s occurred only at the behest of the High Court. Even after such judicial intervention, the State continued to only extend the benefit of the court's directions to those who specifically approached the courts. The State's lackadaisical conduct is discernible from this action of initiating acquisition proceedings selectively, only in respect to the lands of 12 those writ petitioners who had approached the Court in earlier proceedings, and not other land owners, pursuant to the orders dated 23.04.2007 (Anakh Singh Vs. State of H.P.) and 20.12.2013 (Onkar Singh Vs. State) respectively. In this manner, at every stage, the State sought to shirk its responsibility of acquiring land required for public use in the manner prescribed by law.

18. There is a welter of precedents on delay and laches which conclude either way - as contended by both

sides in the present dispute - however, the specific factual matrix compels this Court to weigh in favour of the appellant-land owners. The State cannot shield itself behind the ground of delay and laches in such a situation; there cannot be a 'limitation' to doing justice. This Court in a much earlier case - Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, held: (AIR pp. 335-36 Para 11)

"11. Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material.

But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

46. It may also be noted that in almost all the cases where the Hon'ble Supreme Court has refused to entertain a land loser's legal action on the ground of delay or laches, were cases where the land loser challenged the acquisition proceedings after undue delay. This is obviously because such person, having permitted utilization of his land by not challenging the acquisition promptly, disentitled himself from challenging the legality of the acquisition proceedings. However, such a person's claim to compensation cannot be defeated by the State on the ground of delay.

47. In the facts of the present case, the State having deprived the writ petitioners of their property without following due process of law and without paying any compensation-which is really an act of expropriation-the State cannot be permitted to argue that the delay on the part of the writ petitioners in approaching the Court will cause imposition of greater financial burden on the State since in the meantime the 2013 Act has come into operation and holds the field. Had the State acted in accordance with law, it could have avoided the additional financial burden, if any, that may be foisted on it by reason of compensation being calculated in terms of the provisions of the 2013 Act. In this connection one may refer to the decision of a Coordinate Bench rendered on September 29, 2022 in ***MAT 464 of 2018 (The State of West Bengal & Ors. v. Dilip Ghosh & Ors.)***.

48. In view of the aforesaid, the present appeal fails. We direct the First Land Acquisition Collector / the Competent Authority to initiate proceedings for acquiring the land of the appellants under the provisions of the 2013 Act and complete such proceedings within 4 months from date and pay the compensation amount to the respondents/writ petitioners within 4 weeks thereafter.

49. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)