

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Sugato Majumdar

**SA 383 of 2010
SMT. KHATOMIA KUMARIN & ORS.
VS
STATE OF WEST BENGAL & ORS.**

For the Appellants	:	Mr. Sourav Sen, Sr. Adv. Ms. Shila Sarkar, Adv. Ms. A. Chakraborty, Adv. Ms. S. Bhattacharya, Adv.
For the Respondent Nos. 5 & 8	:	Mr. Soumik Ganguly, Adv. Mr. Dilip Kr. Sadhu, Adv. Ms. Priti Barman, Adv.
For the State	:	Ld. AGP Jahar Lal De Mr. Shamim Ul Bari, Adv.
Hearing concluded on	:	26.02.2026
Judgment on	:	12.03.2026

Sugato Majumdar, J :

The instant appeal is preferred against the Judgment and Decree dated 23rd March, 2002 passed by the Civil Judge, Senior Division, Additional Court, Purulia in Title Appeal No.6 of 1985 affirming the Judgment and Decree dated 24/11/1984 passed by the Civil Judge, Junior Division, Purulia in Title Suit No. 204 of 1982.

The sum and substance of the plaint case was:

- i) The land described in the “Schedule One” of the plaint originally belonged to Mati Kumar and Gati Kumar at Saturi, who used to possess the same in assertion of their permanent transferable raiyati right therein.
- ii) Gati Kumar died leaving behind him his widow Achala Kumarin and two daughters Adari Kumarin and Dingli Kumarin. All the right, title and interest of Gati Kumar in respect of the suit land devolved on his legal heirs, so named.
- iii) While Mati Kumar and the legal heirs of Gati Kumar were in exclusive possession of the land, they transferred the same in terms of a registered deed of sale dated 24/03/1953 in favour of one Panchanan Kumar, the predecessor in interest of the Plaintiffs.
- iv) In the year 1973/74, a portion of land measuring about 0.25 acres land was acquired by the Government of West Bengal in C.S. Plot No. 1544 and 1545. Award was accordingly disbursed and prepared in the name of Panchanan Kumar in LA Case No. 37 (R) of 1973-74 and the said Panchanan Kumar received compensation accordingly.
- v) Panchanan Kumar expired leaving behind him his widow, one son and two daughters who were the original Plaintiffs. Except the vested part, the rest of property devolved on the Plaintiffs.
- vi) While the original Plaintiffs were in exclusive possession of the suit land; a portion of land measuring about 0.29 acres out of the schedule one land had been acquired by the Defendant No. 1, the State of West Bengal in the name of Bandu Irrigation Scheme but the Award no. 155

to 160, payable on account of such acquisition were given to the Defendant Nos. 2 to 7.

- vii) According to the original Plaintiffs, the original Defendant Nos. 2 to 7 had no right, title and interest in the suit land; therefore, awarding compensation on account of acquisition of 0.29 acres of land to the original Defendant Nos. 2 to 7 is not only erroneous but collusive to.
- viii) It was averred in the plaint that before acquisition neither any notice had been served on the Plaintiffs nor any enquiry had been made. The names of Defendant Nos. 2 to 7 were recorded and entries were made in R.S. Settlement Operation on the basis of some alleged sale deeds dated 25/01/1965 and 18/03/1966 though such deeds are non-existent in the concerned office for the registration of deeds and documents.
- ix) Plaintiffs served notice under Section 80 of the Code of Civil Procedure, 1908 to the Defendant No. 1 State.
- x) The Plaintiffs instituted the suit, praying for declaration that the Plaintiffs were entitled to as raiyat of the suit land measuring about 0.29 acres comprised in schedule I; the Defendant Nos. 2 to 7 had no right, title or interest in the same; recovery of Rs.1472.36 paisa from the Defendants along with other prayers.

The Defendant Nos. 4, 5, 6 and 7 filed written statement. Apart from challenging the suit as not maintainable, barred by law of limitation, bad for non-joinder and mis-joinder of the parties, the written statement pleaded as follow:-

- a) The property originally belonged to one Loahu Majhi in raiyati right and his name was so recorded in C.S. Khatian No. 198 of Mouza Satara.
- b) Loahu Majhi by an oral gift transferred the property to Narottam Gosai who enjoyed the property getting the same cultivated by Bhim Kumar. On death of Narottam, the property resumed and returned to *jot* and the owners began to possess the same.
- c) There was amicable oral partition of the property among the legal heirs of Loahu Majhi. Property in Khatian No. 198 was begotten as shared by Baneswar Bhuja and Taru; their descendants began to possess the said property.
- d) The answering Defendants denied execution of any deed by the said Mati Kumar and Gati Kumar in favour of Panchanan Kumar on 24/03/1953.
- e) The answering Defendants denied payments of any compensation under any award as claimed in the plaint, on account of acquisition of Plot No. 1544 and 1541 in L.A. Case No. 37 (R) of 1973-75.
- f) The answering Defendants denied the right, title and interest of Panchanan Kumar in the suit schedule property.
- g) It was further averred by answering Defendants that on subsequent acquisition of land by the State, award was paid on the basis of actual possession and proper verification of the locality. The Plaintiffs were present in the locality and even the Plaintiff No. 1 was present at the time of payment of compensation money to the Defendants.

h) It was further stated that the properties acquired were ancestral property of the answering Defendants and the right, title, interest of the original Plaintiffs in suit land were denied. According to the Defendant, this suit was not maintainable.

The Trial Court framed five issues. On the basis of rival pleadings, following issues were framed:

1. Is there any cause of action for this suit?
2. Is the suit maintainable in its present form?
3. Have the Plaintiffs any right, title and interest in the suit lands?
4. Have the Defendant nos. 2 to 7 got any right, title or interest over the suit lands?
5. Are the Plaintiffs entitled to a decree, as prayed for?

The Trial Court dismissed the suit opining that it was necessary for the Plaintiffs to prove their cases which they failed to do.

An appeal was preferred against the judgment and decree of the Trial Court dated 24/11/1984.

The said Title Appeal No. 6 of 1985 was dismissed by the Appellate Court on the ground that the Civil Court had no jurisdiction to try a suit under Section 9 of CPC in view of Section 18 of the Land Acquisition Act, 1894.

The instant appeal was accordingly preferred against the judgment and decree dated 22/02/2002 passed by the First Appellate Court.

At the time of admission of the appeal, the following substantial questions of law were framed:

1. Whether the Civil Judge of the Court of Appeal below having found title in favour of Plaintiffs/Appellants erred in not holding that present suit at the instance of the Plaintiffs/Appellants is maintainable and Jurisdiction of land acquisition judge does not oust jurisdiction of civil court.
2. Whether the learned Judge of the Court of Appeal below erred in not holding that notice in connection with the acquisition of the lands of the Plaintiffs/Appellants admittedly not served upon them entitling them to prefer claim constitute irregularities and in such circumstances a suit is maintainable in court notwithstanding an award made by the collector.
3. Notice under section 80 of Code of Civil Procedure having contained all the implicit ingredient of section 52 of the Land Acquisition and the collector in spite of service of such notice not having adjudicated the claim of Plaintiffs/Appellants the whether the learned judge of the court of appeal below erred in not holding that a suit will lie in civil court.
4. Whether the learned Judge of the Court of Appeal below ought to have held that issue no. 1 and 2 have not been pressed by the Defendants/Respondents and as such they are debarred from raising such point in the court of appeal below and the learned judge of the appeal court below ought not to have entertained such point.
5. Whether the learned Judge of the Court of Appeal below erred in not holding that the Plaintiffs/Appellants had no occasion to raise the matters as indicated in the judgement of the Court of Appeal below particularly

when the Plaintiffs/Appellants had no knowledge of payment of compensation as no notice of acquisition in connection with schedule I property was served upon them.

Mr. Sen, the Learned Counsel appearing for the Appellant submitted, in respect of Question No.1, 2, 3 and 5 that on perusal of Section 30 of Land Acquisition Act, 1894 it is clear that the section itself contemplates adjudication of disputes on apportionment by Court. It provides a simple procedure of reference. The object is to save the parties from unnecessary expenditure and wastage of time in filing separate suit for the purpose. These provisions do not exclude the jurisdiction of the Civil Court nor such exclusion can be implied. Mr. Sen referred to **Asher Ali Vs. on the death of Sukhna Seikh, his legal heirs Mr. Misir Ali & Ors. [(1991) 1 GLR 451]**.

It was submitted by Mr. Sen that Section 31 of the Land Acquisition Act, 1894 provided that the State is bound to tender payment of compensation awarded by him to the persons entitled thereto according to the award; the only persons who can raise a dispute under Section 30 are those whose names were set out in the award. But the Collector is not authorised to decide finally the conflicting rights of the person interested in the amount of compensation. Mr. Sen referred to **G.H. Grant Dr. Vs. State of Bihar [AIR 1966 SC 237]** and **Punjab & Haryana High Court in Shyam Lal & Ors. Vs. Sham Lal & Ors. [AIR 2007 P & H 89]**.

It was further argued by Mr. Sen that the person concerned who has not received notice under Section 9 of the Land Acquisition Act, 1894 and who had no knowledge of acquisition can maintain a suit for recovery of compensation due to him against the State as well as against the persons who have received the same from the Collector in view of the third proviso to Section 31 (2) of the Act. More so, the

right agitated by the Appellants before the Court are pre-existing common law rights which can be enforced in a Civil Court irrespective of exclusionary provision in a statute. Mr. Sen also referred to **Raja Ram Kumar Bhargava (Dead) Vs. Union of India [1980 (1) SCC 681]**.

So far as the substantial question no. 4 is concerned, Mr. Sen submitted that once a party does not make any submission and/or do not press any issue framed by the Learned Trial Judge, the said party is estopped from raising/deliberating on such issue in the Appeal Court inasmuch as it is settled law that not pressing such issue amounts to waiver. Mr. Sen also referred to **Minati Sen Vs. Kalipada Ganguli [AIR 1997 Cal 386]**.

The Learned Counsel for the Respondent argued that Land Acquisition Act, 1894 is a complete Code in itself. It provided remedy to the aggrieved persons; it provided constitution of appropriate forum for adjudication of the concerned disputes. Referring to Section 18 of the Act, the Learned Counsel for the Respondent submitted that any person interested who has not accepted the award may by written application to the Collector, require the matter to be referred to the Court and the Court along others are authorised to decide the question as to whom it would payable. According to the Learned Counsel, the designated Court is authorised and it falls within ambit of the Court having jurisdiction to decide the issue raised in the present suit.

Secondly, it was argued by the Learned Counsel that jurisdiction of the Civil Court is barred under the scheme of the Act. The Act is a special statute which provides remedy for enforcement of its provisions and adjudication of rights in a specific forum to the aggrieved persons. The rights attempted to be exerted in the suit, is not a common law right but rather a right or rights emanating from the Act

itself. Therefore, there is a jurisdictional bar in the suit which has been rightly decided by the Appellate Court.

I have heard rival submissions.

It is settled law that there is no estoppel against the statute. The purport of the argument of Mr. Sen on the substantial question of law no. 4 is that the principal of waiver comes to be applied here. But *a-priori*, the question which should be addressed is whether the Trial Court had jurisdiction to decide a *lis* pending before it. The question of jurisdiction, concerned herein is not mere territorial or pecuniary jurisdiction. It is a question of inherent jurisdiction of this Court which hinges on the existentiality of the suit. Three Judges Bench decision in **Nasli Neville Wadia Vs. Ivory Properties & Ors. [(2020) 6 SCC 557]** may be considered.

“**20.** Jurisdiction is the power to decide and not merely the power to decide correctly. Jurisdiction is the authority of law to act officially. It is an authority of law to act officially in a particular matter in hand. It is the power to take cognizance and decide the cases. It is the power to decide rightly or wrongly. It is the power to hear and determine. Same is the foundation of judicial proceedings. It does not depend upon the correctness of the decision made. It is the power to decide justiciable controversy and includes questions of law as well as facts on merits. Jurisdiction is the right to hear and determine. It does not depend upon whether a decision is right or wrong. Jurisdiction means power to entertain a suit, consider merits, and render binding decisions, and “merits” means the various elements which enter into or qualify plaintiff’s right to the relief sought. If the law confers a power to render a judgment or decree, then the court has jurisdiction. The court must have control over the subject-matter, which comes within classification limits of law under which the court is established and functions.

21. The word “jurisdiction” is derived from Latin words “juris” and “dico”, meaning “I speak by the law” and does not relate to rights of parties as between each other but to the power of the court. Jurisdiction relates to a class of cases to which a particular case belongs. Jurisdiction is the

authority by which a judicial officer takes cognizance and decides the cases. It only presupposes the existence of a duly constituted court having control over subject-matter which comes within classification limits of the law under which court has been established. It should have control over the parties' litigant, control over the parties' territory, it may also relate to pecuniary as well as the nature of the class of cases. Jurisdiction is generally understood as the authority to decide, render a judgment, inquire into the facts, to apply the law, and to pronounce a judgment. When there is the want of general power to act, the court has no jurisdiction. When the court has the power to inquire into the facts, apply the law, render binding judgment, and enforce it, the court has jurisdiction. Judgment within a jurisdiction has to be immune from collateral attack on the ground of nullity. It has co-relation with the constitutional and statutory power of tribunal or court to hear and determine. It means the power or capacity fundamentally to entertain, hear, and determine.”

Jurisdictional question, confronted herein, rather hinges on the authority of the court to decide a *lis*. Non-existence of jurisdiction makes the order of a Court null and void. By consent such non-existent jurisdiction cannot be bestowed upon a Court. Even failure to argue on that point does not come in an aid and does not create a jurisdiction, non-existence in any manner. Therefore, the argument of Mr. Sen in respect of the substantial question of law no. 4 is not acceptable.

The principle limb of argument of Mr. Sen was that the scheme of the Land Acquisition Act, 1894 did not oust the jurisdiction of the Civil Court in its totality. The issue is, therefore, when a special statute bars jurisdiction of the Civil Court remains completely devoid of jurisdiction. Five Judges Bench of the Supreme Court of India in **Dhulabhai Vs. State of Madhya Pradesh & Anr. [1968 SCC OnLine SC 40]** elaborated and decided the issue. The decision marked out a distinction between a right available under common law as well as statutory rights ascribed by a specific statute which provided specific machineries for its implementation and elimination of jurisdiction of civil court. There is no allegation

in the instant case that the land was illegally occupied by the State in which case a common law action for trespassing, unauthorised occupation and mesne-profit would have been available which is not a case here. The Appellants claim relates to payment of money on account of acquisition of land by the State. This is a form of compensation payable under the Act. This is not a common law right. Argument of Mr. Sen, therefore, is not acceptable.

Section 4 of the Act provides publication of Notification. There is no provision in Section 4 of individual service of notice to all persons. There is no challenge that notification was not in conformity of the rule. Ignorance of notification is not a defence available to the Appellants. Once the notification is made any person interested in any land which was subject matter of notification issued under Section 4(1) may raise objection to the acquisition of land. This is specific provision of Section 5A(1). Section 5A(2) enjoins duty on the Collector to give opportunity to the objector of being heard. Section 5A(3) provides that a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation. Thus, the Act itself provides a remedy to the person interested in the land. The Appellants did not avail any opportunity or exercise rights conferred by the Act. Ignorance of notice under Section 4 is not a bliss in this case but rather a fatal defence.

The scope of jurisdiction of the Civil Court under the Land Acquisition Act, 1894 was considered in **Laxmi Chand Vs. Gram Panchayat, Kararia [(1996) 7 SCC 218]**. The Supreme Court observed and held:

“It is seen that Section 9 of the Civil Procedure Code, 1908 gives jurisdiction to the civil court to try all civil suits, unless barred. The cognizance of a suit of civil nature may either expressly or impliedly be barred. The procedure contemplated under the Act is a special procedure

envisaged to effectuate public purpose, compulsorily acquiring the land for use of public purpose. The notification under Section 4 and declaration under Section 6 of the Act are required to be published in the manner contemplated thereunder. The *inference* gives conclusiveness to the public purpose and the extent of the land mentioned therein. The award should be made under Section 11 as envisaged thereunder. The dissatisfied claimant is provided with the remedy of reference under Section 18 and a further appeal under Section 54 of the Act. If the Government intends to withdraw from the acquisition before taking possession of the land, procedure contemplated under Section 48 requires to be adhered to. If possession is taken, it stands vested under Section 16 in the State with absolute title free from all encumbrances and the Government has no power to withdraw from acquisition.

3. It would thus be clear that the scheme of the Act is complete in itself and thereby the jurisdiction of the civil court to take cognizance of the cases arising under the Act, by necessary implication, stood barred. The civil court thereby is devoid of jurisdiction to give declaration on the invalidity of the procedure contemplated under the Act. The only right an aggrieved person has is to approach the constitutional courts, viz., the High Court and the Supreme Court under their plenary power under Articles 226 and 136 respectively with self-imposed restrictions on their exercise of extraordinary power. Barring thereof, there is no power to the civil court.”

The scheme of the Act is completing itself and thereby the jurisdiction of the Civil Court to take cognizance of the act arising under the Act by necessary implication stood barred. The Civil Court thereby is devoid of jurisdiction to give declaration on the in validity of the procedure contemplated under the Act. The only

right aggrieved person has an approach of the constitutional Court. This decision had been reiterated in subsequent decisions. In **State of Bihar v. Dhirendra Kumar, (1995) 4 SCC 229**, the Supreme Court of India decided:

“We are, therefore, inclined to think, as presently advised, that by necessary implication the power of the civil court to take cognizance of the case under Section 9 of CPC stands excluded, and a civil court has no jurisdiction to go into the question of the validity or legality of the notification under Section 4 and declaration under Section 6, except by the High Court in a proceeding under Article 226 of the Constitution. So, the civil suit itself was not maintainable.”

In **State of Punjab Vs. Amarjeet Singh [(2011) 14 SCC 713]** referred to **Laxmi Chand’s** case and other authorities, the Supreme Court of India and reiterated the same proposition of law that the civil court has no jurisdiction to entertain a suit arising out of claim for compensation under the Land Acquisition Act, 1894.

As stated above, the claim is one of compensation on account of acquisition of land. Section 18 of the Act is also relevant. Section 18(1) provides that any person interested who has not accepted the award, may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested. This sub-section has wide amplitude to address grievance like that one raised in the present case in the form of person’s specific payment. Very clearly, remedies are provided in the Act itself which are the subject matter of the suit. Since the suit sought to enforce statutory rights of compensation, for reasons as stated above, the jurisdiction of the civil court is barred. Abstention from agitating the issues cannot confer such jurisdictions.

For reasons as aforesaid, this Court comes to an inevitable conclusion that the First Appellate Court rightly held that the Civil Court has no jurisdiction which demands no interference by this Court.

Accordingly, the instant appeal is dismissed along with all pending applications, if any.

Trial Court Records be returned.

(Sugato Majumdar, J.)