



**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

**Before:
The Hon'ble Justice Hiranmay Bhattacharyya**

**WPA 15684 of 2025
Bijoy Krishna Bera @ Bijoy Bera
VS.
The State of West Bengal & Ors.**

For the Petitioner : Mr. Uttam Kumar Bhattacharyya
..... advocate

For the State : Mr. Supratim Dhar, Sr. Adv.
Mr. Sabyasachi Mukherjee advocates

Reserved on : 09.03.2026

Judgment on : 06.05.2026

Hiranmay Bhattacharyya, J.:-

1. Petitioner has prayed for a direction upon the respondent authorities to initiate an acquisition proceeding afresh in terms of the order of the Special Land Acquisition Officer, Paschim Medinipur, dated May 18, 2018 under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter "the Act"), and to set aside the Memo dated March 18, 2020 issued by the Superintendent Engineer State Highway Planning Circle, Public Works (Roads Directorate), Government of West Bengal.
2. Petitioner claims to be the recorded owner of RS plot no. 452,453, 527, 513 and 513/3862 within Mouza Bural, JL No. 388 under Police Station Sabong in the District of Paschim Medinipur. Several plots of land including the aforesaid plots of the petitioner were requisitioned under Section 3(1) of the



West Bengal Land (Requisition and Acquisition) Act, 1948 (Act II of 1948) (for short “the 1948 Act”) for construction of Sabong-Mohar ODR by initiating a proceeding being L.A. Case No. 255 of 1975-1976 as per the proposal received from Superintending Engineer Road Planning Circle. Possession of the plots of land have been taken over and utilised.

3. Petitioner alleges that no notification under Section 4(1a) of the 1948 Act has been published for acquisition of the said plot of land. No award has been passed and compensation in respect of the aforesaid plots has also not been paid to the petitioners till date.
4. Petitioner submitted an application on 15.10.2004 requesting the authorities to pay compensation to the petitioner. Alleging inaction on the part of the respondent authorities, petitioner filed a writ petition being WPA 12396 of 2017 which was disposed of by a co-ordinate bench by directing the Special Land Acquisition Officer, Paschim Medinipur being the 5th respondent herein to consider the representation of the petitioners and to dispose of the same by passing a speaking order after giving an opportunity of being heard.
5. Pursuant to the said order, the 5th respondent passed an order dated May 18, 2018 requesting the Requiring Body to take necessary steps and arrange to fulfil the claim of the petitioner for his Raiyati Land so requisitioned for the purpose of Sabong-Mohar ODR.
6. Subsequently, the Superintendent Engineer State Highway Circle being the 8th respondent herein issued a Memo dated 18.03.2020 requesting the Chairperson, District Land Purchase Committee & District Magistrate Paschim Medinipur being the 3rd respondent herein to submit the land acquisition estimate as per the direct purchase policy authenticated by the competent authority for payment of compensation to the petitioner.
7. Mr. Bhattacharya, learned advocate for the petitioner contended that the property of the petitioner was requisitioned and thereafter no step was taken by the respondent authorities during the lifetime of the 1948 Act for acquisition of the same by resorting to the provisions of Section 4(1a) of the



1948 Act. He further contended that the authorities also did not take any steps to acquire the said property by taking recourse to the provisions of Section 9(3A) of the Land Acquisition (West Bengal Amendment) Act 1997. He contended that in the meantime the Land Acquisition Act 1894 (for short “the 1894 Act”) stood repealed with the coming into force of the 2013 Act on and from 01.01.2014. He, therefore, submitted that since the properties of the petitioner have been utilised by the State, compensation in respect thereof have to be paid to the petitioner by initiating an appropriate proceeding under the 2013 Act. In support of such contention he placed reliance upon the decision of the Hon’ble Division Bench in the case of **State of West Bengal vs. Ganesh Samanta** reported at **(2014) Supreme (Online) (Cal) 2**; **Mandodori Bhakat v. State of W.B.**, reported at **(2013) 1 CHN (Cal) 444**; the Full Bench judgment in the case of **State of West Bengal vs. Sabita Mondal** reported at **(2011) 3 CHN Cal 555**; and an unreported decision of the Hon’ble Division Bench delivered on 22.12.2023 in **MAT 1181 of 2019** in the case of **State of West Bengal vs. Mahadev Khan**.

8. Mr. Dhar, learned senior advocate appearing for the State raised an objection against maintainability of this writ petition on the ground of inordinate delay. He contended that the possession of the land in question was handed over to the Requiring Body during the years 1978-79. He contended that the petitioners, in spite of being aware of violation of the rights did not approach the Court. He contended that the instant application under Article 226 of the Constitution of India cannot be entertained on the ground of inordinate delay and laches. In support of such contention he placed reliance upon the decision of the Hon’ble Supreme Court in the case of **Chairman, U.P.Jal Nigam & Anr vs Jaswant Singh & Anr.** reported at **AIR 2007 SUPREME COURT 924**. He also placed reliance upon the decision of the Hon’ble Supreme Court in the case of **Rabindra Nath Bose and Ors vs Union of India** reported at **(1970) (SCR) (2) 697** in support of his contention that the Court cannot entertain a writ petition after a lapse of several years.



9. Mr. Dhar contended that the 2013 Act cannot be applied retrospectively to acquisition initiated and possession taken and handed over long prior to the said Act coming into force. He contended that the 2013 Act repealed the 1894 Act prospectively and Section 24 applies only to proceedings under the 1894 Act and the same cannot be invoked in a proceeding initiated under the 1948 Act. Mr. Dhar places strong reliance upon an unreported judgment of the Hon'ble Division Bench delivered on 02.02.2026 in a batch of appeals the lead case being **MAT 187 of 2018** in the case of **Mariam Ahmed and another vs. The State of West Bengal and ors.** in support of his contention that the provisions of 2013 Act cannot be attracted to the case on hand as the acquisition proceeding was initiated under Act II of 1948 and not under the 1894 Act.
10. In reply, the learned advocate appearing for the petitioner places reliance upon the decision of the Hon'ble Supreme Court in the case of **Vidya Devi vs. State of Himachal Pradesh and ors.** reported at **(2020) 2 SCC 569**; **Sukh Dutt Ratra v. State of H.P.**, reported at **(2022) 7 SCC 508**; and **Tukaram Kana Joshi & Ors. Thr.Poa Holder vs M.I.D.C. & Ors** reported at **(2013) 1 SCC 353**, in support of his contention that the plea of delay cannot be raised to negate the claim for compensation in land acquisition cases.
11. Heard the learned advocates for the parties and perused the materials placed.
12. The following facts are not in dispute:
 - (i) RS Plot no. 452 measuring area of 09 decimals, RS Plot no. 453 measuring 02 decimals, RS Plot no. 527 measuring 06 decimals, RS Plot no. 513 measuring 11 decimals and R.S. Plot no. 513/3862 measuring 01 decimals total measuring 29 decimals including other lands of Mouza Bural, JL No. 388 under Police Station Sabong was requisitioned under Section 3(1) of the 1948 Act.



- (ii) Possession of the aforesaid plots of land have been taken over and delivered over to the Requiring Body on 22.02.1978 including other lands.
 - (iii) Notification under Section 4(1a) of the 1948 Act has not been published in the Calcutta Gazettee for acquisition of the aforesaid land.
13. The Special Land Acquisition Officer in his order dated 18.05.2018 upon verification of the case record being LA Case No. 255 of 1975-76 and after hearing the petitioner recorded a factual finding that the lands in question namely RS Plot no. 452(P), 453(F), 513(P) & 513/3862(P) with total area of 0.29 acres have been requisitioned and possession of the land has been taken over and handed over to the Requiring Body and the petitioner is entitled to have compensation for his Raiyati land. After returning the aforesaid factual finding, the 5th respondent observed that since both the 1948 Act and 1894 Act have been repealed, such authority is not in a position to pay compensation to the writ petitioner. Accordingly, the 5th respondent requested the Requiring Body to take suitable necessary steps and arrange to fulfil the claim of the petitioner for his Raiyati land. It was further recorded in the said order that the Requiring Body has not placed any fund for giving compensation to the writ petitioner over the said land.
14. Since the learned Senior Advocate for the State raised an objection as to the entertainability of this writ petition on the ground of alleged delay and laches, this Court proposes to deal with such objection at the threshold.
15. Article 300A of the Constitution of India states that no person can be deprived of his property, save by the authority of law. It means that a person cannot be deprived of his property merely by an executive fiat, without any specific legal authority. It is now well settled that the right to property is not a fundamental right protected under Part III of the Constitution of India but it remains a valuable constitutional right.
16. In ***Tukaram Kana Joshi (supra)***, the functionaries of the State took over possession of the lands of the appellants therein without any sanction of



law. State took shelter under the doctrine of delay and laches as grounds for dismissal of the writ petition.

17. The Hon'ble Supreme Court after noticing that there are a few authorities that lay down that delay and laches debar a citizen from seeking remedy under Article 226 or 32 of the Constitution even if his fundamental right has been violated, held that delay and laches is one of the facets to deny exercise of discretion. It was further held that if there is continuity of cause of action or the whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third party interest is involved. It was held that discretion must be exercised judiciously and reasonably and in the event the claim made by the applicant is legally sustainable, delay should be condoned. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done.

18. The Hon'ble Supreme Court held thus-

“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. There is a distinction, a true and concrete distinction, between the principle of “eminent domain” and “police power” of the State. Under certain circumstances, the police power of the State may be used temporarily, to take possession of property but the present case clearly shows that neither of the said powers have been exercised. A question then arises with respect to the authority or power under which the State entered upon the land. It is evident that the act of the State amounts to encroachment, in exercise of “absolute power” which in common parlance is also called abuse of power or use of muscle power. To further clarify this position, it must be noted that the authorities have



treated the landowner as a “subject” of medieval India, but not as a “citizen” under our Constitution.

12. *The State, especially a welfare State which is governed by the rule of law, cannot arrogate itself to a status beyond one that is provided by the Constitution. Our Constitution is an organic and flexible one. Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause action, etc. That apart, if the whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third-party interest is involved. Thus analysed, the petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience.*

13. *The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose. It is not that there is any period of limitation for the courts to exercise their powers under Article 226, nor is it that there can never be a case where the courts cannot interfere in a matter, after the passage of a certain length of time. There may be a case where the demand for justice is so compelling, that the High Court would be inclined to interfere in spite of delay. Ultimately, it would be a matter within the discretion of the Court and such discretion, must be exercised fairly and justly so as to promote justice and not to defeat it. The validity of the party's defence must be tried upon principles substantially equitable. (Vide P.S. Sadasivaswamy v. State of T.N. [(1975) 1 SCC 152 : 1975 SCC (L&S) 22 : AIR 1974 SC 2271] , State of M.P. v. Nandlal Jaiswal [(1986) 4 SCC 566 : AIR 1987 SC 251] and Tridip Kumar Dingal v. State of W.B. [(2009) 1 SCC 768 : (2009) 2 SCC (L&S) 119])*

14. *No hard-and-fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay. The court should not harm innocent parties if their rights have in fact emerged by*



delay on the part of the petitioners. (Vide Durga Prashad v. Chief Controller of Imports and Exports [(1969) 1 SCC 185 : AIR 1970 SC 769] , Collector (LA) v. Katiji [(1987) 2 SCC 107 : 1989 SCC (Tax) 172 : AIR 1987 SC 1353] , Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur [(1992) 2 SCC 598 : AIR 1993 SC 802] , Dayal Singh v. Union of India [(2003) 2 SCC 593 : AIR 2003 SC 1140] and Shankara Coop. Housing Society Ltd. v. M. Prabhakar [(2011) 5 SCC 607 : (2011) 3 SCC (Civ) 56 : AIR 2011 SC 2161] .)

(emphasis supplied)

19. In **Vidya Devi (supra)**, State took over the land of the appellant therein for construction of road without taking recourse to acquisition proceeding.
20. The contention of the State that the appellant or her predecessors had “orally” consented to the acquisition was found to be completely baseless and it was held that there was complete lack of authority and legal sanction in compulsorily divesting the appellant of her property by the State.
21. The contention of the State of delay and laches of the appellant in approaching the Court was rejected. The Hon’ble Supreme Court held thus-

“12.3. *To forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the constitutional right under Article 300-A of the Constitution. Reliance is placed on the judgment in Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai [Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai, (2005) 7 SCC 627] , wherein this Court held that: (SCC p. 634, para 6)*

“6. ... Having regard to the provisions contained in Article 300-A of the Constitution, the State in exercise of its power of “eminent domain” may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid.”

(emphasis supplied)

12.4. *In N. Padmamma v. S. Ramakrishna Reddy [N. Padmamma v. S. Ramakrishna Reddy, (2008) 15 SCC 517] , this Court held that: (SCC p. 526, para 21)*

“21. If the right of property is a human right as also a constitutional right, the same cannot be taken away except in accordance with law. Article 300-A of the Constitution protects such right. The provisions of the Act seeking to divest such right, keeping



in view of the provisions of Article 300-A of the Constitution of India, must be strictly construed.”

(emphasis supplied)

12.5. *In Delhi Airtech Services (P) Ltd. v. State of U.P. [Delhi Airtech Services (P) Ltd. v. State of U.P., (2011) 9 SCC 354 : (2011) 4 SCC (Civ) 673] , this Court recognised the right to property as a basic human right in the following words: (SCC p. 379, para 30)*

“30. It is accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic oppression of the Government. Jefferson was of the view that liberty cannot long subsist without the support of property. “Property must be secured, else liberty cannot subsist” was the opinion of John Adams. Indeed the view that property itself is the seed-bed which must be conserved if other constitutional values are to flourish, is the consensus among political thinkers and jurists.”

(emphasis supplied)

12.6. *In Jilubhai Nanbhai Khachar v. State of Gujarat [Jilubhai Nanbhai Khachar v. State of Gujarat, 1995 Supp (1) SCC 596] , this Court held as follows: (SCC p. 627, para 48)*

“48. ... In other words, Article 300-A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There has to be no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation.”

(emphasis supplied)

12.9. *In a democratic polity governed by the rule of law, the State could not have deprived a citizen of their property without the sanction of law. Reliance is placed on the judgment of this Court in Tukaram Kana Joshi v. MIDC [Tukaram Kana Joshi v. MIDC, (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491] wherein it was held that the State must comply with the procedure for acquisition, requisition, or any other permissible statutory mode. The State being a welfare State governed by the rule of law cannot arrogate to itself a status beyond what is provided by the Constitution.*

12.11. *We are surprised by the plea taken by the State before the High Court, that since it has been in continuous possession of the land for over 42 years, it would tantamount to “adverse” possession. The State being a welfare State, cannot be permitted to take the plea of adverse*



possession, which allows a trespasser i.e. a person guilty of a tort, or even a crime, to gain legal title over such property for over 12 years. The State cannot be permitted to perfect its title over the land by invoking the doctrine of adverse possession to grab the property of its own citizens, as has been done in the present case.

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. [P.S. Sadasivaswamy v. State of T.N., (1975) 1 SCC 152 : 1975 SCC (L&S) 22]"*

(emphasis supplied)

22. The Hon'ble Supreme Court after noticing that the appellant therein has been divested of her property without being paid any compensation for over half a century held that the cause of action is a continuing one and the demand for justice was compelling as the property was taken over without initiating acquisition proceeding or any procedure known to law.
23. In ***Sukh Dutt Ratra & Another vs. State of Himachal Pradesh and ors.*** reported at **(2022) 7 SCC 508**, the subject land was utilised for construction of road in 1972-73, without initiating any acquisition proceeding. A writ petition was filed in the year 2011 seeking compensation for the subject land.
24. A question fell for consideration before the Hon'ble Supreme Court whether the State merely on the ground of delay and laches, evade its legal responsibility towards those from whom the private property has been expropriated. The Hon'ble Supreme Court held that intervention is



warranted on the grounds of equality and fairness. The Hon'ble Supreme Court held thus-

*“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 those writ petitioners who had approached the court in earlier proceedings, and not other landowners, pursuant to the orders dated 23-4-2007 (in *Anakh Singh v. State of H.P.* [*Anakh Singh v. State of H.P.*, 2007 SCC OnLine HP 220]) and 20-12-2013 (in *Onkar Singh v. State* [*Onkar Singh v. State*, CWP No. 1356 of 2010, order dated 20-12-2013 (HP)]), 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 landowners. 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 SRTC v. Balwant Regular Motor Service* [*Maharashtra SRTC v. Balwant Regular Motor Service*, (1969) 1 SCR 808 : AIR 1969 SC 329] , 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’.”

19. The facts of the present case reveal that the State has, in a clandestine and arbitrary manner, actively tried to limit disbursal of



compensation as required by law, only to those for which it was specifically prodded by the courts, rather than to all those who are entitled. This arbitrary action, which is also violative of the appellants' prevailing Article 31 right (at the time of cause of action), undoubtedly warranted consideration, and intervention by the High Court, under its Article 226 jurisdiction. This Court, in Manohar [State of U.P. v. Manohar, (2005) 2 SCC 126] —a similar case where the name of the aggrieved had been deleted from revenue records leading to his dispossession from the land without payment of compensation held : (SCC pp. 128-29, paras 6-8)

“6. Having heard the learned counsel for the appellants, we are satisfied that the case projected before the court by the appellants is utterly untenable and not worthy of emanating from any State which professes the least regard to being a welfare State. When we pointed out to the learned counsel that, at this stage at least, the State should be gracious enough to accept its mistake and promptly pay the compensation to the respondent, the State has taken an intractable attitude and persisted in opposing what appears to be a just and reasonable claim of the respondent.

7. Ours is a constitutional democracy and the rights available to the citizens are declared by the Constitution. Although Article 19(1)(f) was deleted by the Forty-fourth Amendment to the Constitution, Article 300-A has been placed in the Constitution, which reads as follows:

‘300-A. Persons not to be deprived of property save by authority of law.—No person shall be deprived of his property save by authority of law.’

8. This is a case where we find utter lack of legal authority for deprivation of the respondent's property by the appellants who are State authorities. In our view, this case was an eminently fit one for exercising the writ jurisdiction of the High Court under Article 226 of the Constitution.”

(emphasis supplied)

25. The Hon’ble Supreme Court also reiterated the proposition of law laid down in **Vidya Devi (supra)** and **Tukaram Kana Joshi (supra)** that there is no period of limitation for the Courts to exercise jurisdiction to do substantial justice.
26. The Hon’ble Division Bench in the judgment delivered on 22.12.2023 in **MAT 1181 of 2019** in the case of the **State of West Bengal & Ors. vs. Mahadeb Khan & Ors.** noticed the proposition of law laid down by the Hon’ble Supreme Court in **Vidya Devi (supra)**, **Tukaram Kana Joshi (supra)** and **Sukh Dutta Ratra (supra)** and clarified 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. The Hon'ble Division Bench, however, observed that such a person's claim to compensation cannot be defeated by the State on the ground of delay.

27. The Hon'ble Supreme Court in **B.K. Ravichandra and Others vs. Union of India** reported in **(2021) 14 SCC 703** held that the Court's role is to act as guarantor and jealous protector of the people's liberties and any condonation of the Court is the validation of such unlawful executive behaviour which it then can justify its conduct on the anvil of such loftier purpose. The Hon'ble Supreme Court held thus-

*“35. It is, therefore, no longer open to the State : in any of its forms (executive, State agencies, or legislature) to claim that the law — or the Constitution can be ignored, or complied at its convenience. The decisions of this Court, and the history of the right to property show that though its pre-eminence as a fundamental right has been undermined, nevertheless, the essence of the rule of law protects it. The evolving jurisprudence of this Court also underlines that it is a valuable right ensuring guaranteed freedoms and economic liberty. The phrasing of Article 300-A is determinative and its resemblance with Articles 21 and 265 cannot be overlooked, they in effect, are a guarantee of the supremacy of the rule of law, no less. To permit the State : whether the Union or any State Government to assert that it has an indefinite or overriding right to continue occupying one's property (bereft of lawful sanction) — whatever be the pretext, is no less than condoning lawlessness. The courts' role is to act as the guarantor and jealous protector of the people's liberties : be they assured through the freedoms, and the right to equality and religion or cultural rights under Part III, or the right against deprivation, in any form, through any process other than law. Any condonation by the court is a validation of such unlawful executive behaviour which it then can justify its conduct on the anvil of some loftier purpose, at any future time, aptly described as a “loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need.” | The phrase is quoted from Robert Jackson, J.'s powerful and timeless dissent in *Toyosaburo Korematsu v. United States*, 1944 SCC OnLine US SC 135 : 89 L Ed 194 : 323 US 214 (1944). The full text of the relevant extract, where the Judge dissented from the majority of the US Supreme Court, which upheld the indefinite internment of American citizens of Japanese origin, is reproduced below : (SCC OnLine US SC para 76)“76. ... a judicial construction of the due process clause that will sustain this order is a far more subtle blow to liberty than the promulgation of the [military] order itself. A military order, however unconstitutional, is not*



apt to last longer than the military emergency. ... once a judicial opinion rationalises such an order to show that it conforms to the Constitution, or rather rationalises the Constitution to show that the Constitution sanctions such an order, the Court for all times has validated the principle of racial discrimination in criminal procedure and of transplanting American citizens. The principle then lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need.”]

(emphasis supplied)

28. From the aforesaid discussion it follows that if a person is deprived of his property except by due process of law, the State cannot be allowed to take shelter under the doctrine of delay and laches, as it would amount to validation of the unlawful executive behaviour, which is not permissible. Thus, the claim for fair compensation of a land loser cannot be negated solely on the ground of delay in approaching the Court but the same should be tested on equitable principles.
29. The Hon'ble Division Bench in **MAT 464 of 2018** in the case of **The State of West Bengal vs. Dilip Ghosh and ors.** judgment delivered on 29.09.2022 after noting that the judgment in the case of **Vidya Devi (supra)** says that the Hon'ble Supreme Court exercised extraordinary jurisdiction under Articles 136 and 142 of the Constitution of India to direct the State to pay compensation, held that the detailed discussion leading to the conclusion that the State cannot resort to the principle of adverse possession to defeat a citizen's claim for compensation for his land acquired by the State, is a binding declaration of law within the meaning of Article 141 of the Constitution. The Hon'ble Division Bench further held that if the State forcibly occupies the land of a citizen who may not be that enlightened, informed or diligent and after twelve years the State is permitted to claim that it has perfected its title to such land by way of adverse possession cannot be countenanced in law and would be contrary to all canons of justice.
30. In **U.P. Jal Nigam and another vs. Jaswant Singh & Anr.** reported at **(2006) 11 SCC 464**, the employees of U.P. Jal Nigam filed writ petitions



long after their superannuation challenging their retirement which was said to be made on attaining the age of 58 years.

31. The question that fell for consideration before the Hon'ble Supreme Court was whether the employees who did not wake up to challenge their retirement and accepted the same, collected their post-retirement benefits can be granted relief in the light of the subsequent decision of the Hon'ble Supreme Court. The Hon'ble Supreme Court held that whenever it appears that the claimants lost time and did not rise to the occasion in time for filing the writ petitions, the Court should be very slow in granting relief to the incumbent.
32. The said decision pertains to service jurisprudence and, therefore, the same cannot apply to a case where the land loser seeks compensation when his property has been utilised without sanction of law.
33. In ***Rabindra Nath Bose*** (supra), the petitioners therein complained that the Government in breach of the rules governing the service appointed the respondents and were also given preferential treatment in the matter of seniority. The Hon'ble Supreme Court dismissed the said petitions on the ground that there has been inordinate delay in presenting the same. The said decision also pertains to service jurisprudence and, therefore, cannot come to the aid of the State.
34. In the case on hand the possession of the property of the petitioner was taken over by initiating a proceeding for requisition and the same has been utilised without even resorting to the provisions for acquisition either under the 1948 Act during its lifetime or by resorting to the provisions of Section 9(3A) of the 1894 Act till the said Act was repealed by the 2013 Act. Since the property of the petitioner was taken over and the petitioner also repeatedly requested for grant of compensation, such a claim cannot be denied by the State on the plea of delay and laches as the State is obliged to comply with the procedure laid down for acquisition in accordance with law which includes payment of fair compensation to the land losers. Cause of action in the case on hand is a continuing one. The manner in which the



petitioner has been deprived of his property without legal sanction shocks the conscience of this Court. The claim of the petitioner is found to be sustainable by this Court in view of the undisputed factual position. This Court is, therefore, inclined to exercise discretion in favour of the petitioner in order to promote justice.

35. For all the reasons as aforesaid this Court is not inclined to accept the contention of the learned Senior Advocate for the State that the writ petition should be dismissed on the ground of alleged delay and laches.
36. After deciding the aforesaid issue in favour of the petitioner, this Court shall now proceed to decide whether the petitioner is entitled to compensation under the 2013 Act.
37. The property of the petitioner was requisitioned by an order passed under Section 3(1) of the 1948 Act. Possession of the land was taken and delivered to the Requiring Body. Admittedly no notice under Section 4(1a) of the 1948 Act was published in the Calcutta Gazette.
38. At this stage it would be profitable to recapitulate the provisions of Section 3 and 4 of the 1948 Act for which the same are extracted hereinafter.

"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 authorised 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 any person fails to comply with an order made under sub-section (1) the Collector or any person authorised 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 (ii) 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 incumbrances and the period of requisition of such land shall end.”

39. 1948 Act was amended by the West Bengal Land (Requisition and Acquisition) (Amendment) Act 1994 which was published in the Calcutta Gazette on 31.03.1994. By virtue of the said Amendment Act, Section 3 of the 1948 Act was omitted. Therefore, the power of the State to requisition any land was taken away by virtue of the Amendment Act of 1994 with effect from 01.04.1994. The validity of the 1948 Act was also extended till 31.03.1997 by virtue of the said Amendment Act.



40. 1948 Act was further amended by West Bengal Land (Requisition and Acquisition) (Amendment) Act 1996 thereby inserting Section 7A after Section 7 of the 1948 Act. A plain reading of Section 7A makes it clear that unless an award is made within the time specified therein, the notice under Section 4(1a) shall lapse.
41. The validity of the 1948 Act which was extended from time to time was not extended any further and it ceased to be operative on the expiry of 31st March, 1997.
42. 1948 Act is a temporary statute which stood expired by efflux of time. It is now well settled that any proceeding under a temporary statute also dies a natural death in the absence of any special provision to the contrary.
43. Possession taken under Section 3 of the 1948 Act was a possession on requisition. Issuance of notice under Section 4(1a) of the 1948 Act would have the effect of ending the requisition and converting into an acquisition and it would remain an acquisition till the said notice remains valid. If no notice under Section 4(1a) is issued, the requisition shall come to an end on the expiry of the 1948 Act and the property should be restored to the owner. Requisition can also be said to have come to an end for acquisition where notice issued under Section 4(1a) stood lapsed before 31st March 1997.
44. Land Acquisition (West Bengal Amendment) Act, 1997 was enacted to revive the requisition for acquisition.
45. By virtue of such amendments, Sub-sections 3A and 3B were inserted after Section 9(3) of the 1894 Act. Sub-section 3A and 3B of the 1894 Act as incorporated by way of amendment is extracted hereinafter.

“(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 subsection (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.”

46. Section 9(3B) comes into play where notice under Section 4(1a) of the 1948 Act has been issued. Admittedly notice under Section 4(1a) has not been issued in the case on hand. In view thereof Section 9(3B) cannot have any manner of application to the case on hand.
47. Section 9(3A) states that in a case where possession has already been taken on requisition under Section 3 of the 1948 Act, the provision of Section 4(1), 5A, 6, 7 and 8 of the 1894 Act shall be deemed to have been complied with. Proviso thereto states that the date of notice under Section 9(3A) shall be the date of reference for the purpose of determining the value of such land under the 1894 Act. Second proviso states that when the Collector has made an award under Section 11 in respect of any such land, shall upon such award, vest absolutely in the government free from all incumbrances.



48. In the case on hand, the possession of the land in question was taken under Section 3 of the 1948 Act. Such possession was taken on requisition. In the absence of any notice being published under Section 4(1A) of the 1948 Act the question of vesting of the land as contemplated under Section 4(2) of the 1948 Act cannot and does not arise.
49. 1948 Act stood expired due to efflux of time after 31.03.1997. With the expiry of the 1948 Act by efflux of time, the requisition made under Section 3 of the said Act also came to an end. Thus, the possession of the property after 31.03.1997 without initiating any proceeding for acquisition is without any authority of law. The State was under an obligation to restore possession of the land to the land owner after 31.03.1997.
50. The Land Acquisition (West Bengal Amendment) Act 1997 empowered the State to continue with possession of such lands by resorting to Section 9(3A) of the 1894 Act. The effect of the Land Acquisition (West Bengal Amendment) Act 1997 fell for consideration in **Sabitri Devi vs. State of West Bengal** reported at **(2002) 3 CHN 108** wherein it was held that revalidation has the effect of reviving requisition for acquisition. The coordinate bench in paragraph 41 held thus-

“41. The revalidation has the effect of reviving the requisition for acquisition. As such it is only on the issue of notices under sub-section (3A) or (3B) of section 9 of 1894 Act, the revalidation takes, effect. The requisition having ended on the effacement of the statute the property is to be restored to the owner. It could also be treated to have been ended for acquisition where notices under section 4(1a) of 1948 Act stood lapsed before 31st March, 1997. By reason of 1997 Amendment in West Bengal of 1894 Act a fiction is created. By reason of such fiction the requisition would stand converted into acquisition with the issue of notice under section 9(3A) of the 1894 Act, as amended in 1997 in West Bengal. As soon section 9(3A) is resorted to, the possession, if continued after requisition and not restored, shall be deemed to be a possession revalidated under the Land Acquisition Act which then would be a possession for acquisition on the issue of the notification/notice under section 9(3A). Even though the award is not made before the expiry of time limit provided under section 7A of the 1948 Act, the possession then would become a possession under the 1894 Act attracting the application of section 48 of that Act. But in a case where the notice under section 4(1a) of 1948 Act is valid as on 31st March, 1997 on the issue of notice under section 9(3B) the possession would be revalidated



under 1894 Act from the date of issue of the notice/notification under section 4(1a) of 1948 Act. As soon the possession becomes a possession under the 1894 Act attracting the application of section 48 of that Act the limitation provided in section 11A of that Act would not be render the acquisition invalid on its expiry. The moment notice under section 9(3A) or (3B) of 1894 Act is issued, the provisions of section 48 of that Act becomes applicable. As such when the case comes under the provisions of the said section the State Government has no authority to withdraw. Therefore, expiry of limitation lapse of two years provided in section 11A of 1894 Act, from 1th March, 1999 namely, the date of issue of the notice under section 9(3A) of 1894 Act, will not be operative in a case where possession as hereinbefore stated, has already been takes. Thus, there is no scope for treating the proceeding as lapsed.”

(emphasis supplied)

51. In **Sabitri Devi (supra)**, it has been further held that as soon Section 9(3A) is resorted to, the possession, if continued after requisition and not restored, shall be deemed to be a possession under the 1894 Act which then would be a possession for acquisition on the issue of the notice under Section 9(3A). However, where notice under Section 4(1a) of 19485 Act is valid as on 31.03.1997, on the issue of notice under Section 9(3B), the possession would be revalidated under the 1894 Act from the date of issuance of notice under Section 4(1a) of 1948 Act. It was further held that Sections 9(3A) and 9(3B) of 1894 Act are steps for acquisition under the 1894 Act. It was held thus-

“45. In cases where notice under section 9(3A) or (3B) of the 1894 Act as amended 1997 Act, is not issued, whether the notice under section 4(1a) is serving or not on 31st March, 1997 by reason of lapse of 1948 Act not only the requisition but also the acquisition would lapse irrespective of the principle once vested cannot be divested. Once a temporary statute provides a particular manner, after the temporary statute expires, the same cannot be revived by a fresh statute unless expressly provided for a saving clause. Sections 9(3A) and (3B) of 1894 Act are steps for acquisition under 1894 Act creating legal fiction which has to be interpreted having regard to the provisions of General Clauses Act vis a vis a temporary statute.”

(emphasis supplied)

52. State of West Bengal preferred an appeal against the judgment delivered by the co-ordinate bench in **Sabitri Devi (supra)**. The said appeal, along with the other three appeals, was assigned before the Full Bench. Three Hon'ble



Judges of this Court decided four appeals, the lead case being **FMA 486 of 2007 (State of West Bengal vs. Sabita Mondal)** which was reported at **2011(3) CHN (Cal) 555**.

53. The Hon'ble Full Bench held that 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 Section 4(1a) issued after April 1, 1994 from being lapsed by giving the scope of revival by way of a notice under Section 9(3B) of the 1997 Amendment Act if the award had not been passed within three years from the date of publication of such notice which would otherwise lapse if the Act of 1997 would not come into operation at the midnight of March 31, 1997.
54. It was further clarified that in respect of those notices under Section 4(1a) 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 1997 Amendment Act, no provision has been made for revival of those lapsed notices.
55. The Hon'ble Full Bench affirmed the order passed by the Hon'ble Single Judge in **Sabitri Devi (supra)**.
56. In the case on hand, the possession of the land of the petitioner was taken in exercise of the power of requisition under a temporary statute. The said land has been utilised for a permanent purpose without initiating any proceeding for acquisition of the same under the 1948 Act.
57. Article 300A of the Constitution of India states that no person can be deprived of his property, save by authority of law. The power to acquire land falls within the purview of eminent domain of the State and the Land Acquisition Laws provide a complete mechanism for deprivation of property of a person in accordance with law. Utilisation of a property without payment of fair compensation to the land owner(s) is in violation of Article 300A of the Constitution of India. If the property of a citizen has been utilised for a public purpose, State is obliged to pay fair compensation to such land owner in accordance with law.



58. It is not the case of the respondent State that notice under Section 9(3A) has been served upon the petitioner. In the meantime, the 1894 Act stood repealed with the coming into force of the 2013 Act on and from 01.01.2014. Thus, there is no further scope to issue a notice under Section 9(3A) of the 1894 Act after the 1894 Act stood repealed.
59. To the mind of this Court, the proceeding initiated under the 1948 Act stood lapsed with the effacement of the said statute. No attempt was made to revalidate the requisition for acquisition by issuing a notice under Section 9(3A) of the 1997 Amendment Act. This Court accordingly holds that the authorities of the State are possessing the land in question forcibly and without any authority of law. The land owners have been deprived of their right to get fair compensation for their land.
60. The Hon'ble Supreme Court in ***State of W.B. v. Aziman Bibi***, reported at **(2016) 15 SCC 710** noted that the land of the writ petitioners therein had been utilised pursuant to a notification under Section 4 of the West Bengal Land Development and Planning Act, 1984 followed by a declaration under Section 6 of the said Act and also recorded the undisputed fact of the said case that after taking over possession of the said land the same was utilised for public purpose without passing any award determining the compensation to be paid to the land owners. The Hon'ble Supreme Court after noticing that the land acquisition proceeding had lapsed directed the State to take steps for notifying the acquisition once again and determine compensation in accordance with law.
61. In ***Ganesh Samanta (supra)*** though notice under Section 4(1a) of the 1948 Act was issued but admittedly no award was published within three years from the date of issuance of such notification. The Hon'ble Division Bench held that the notice issued under Section 4(1a) of the 1948 Act stood lapsed, the title which was vested with the State by operation of law under Section 4(1a) of the 1948 Act will not continue to remain with the State after the State failed to publish the award under Section 7A of the said Act within the statutory period. The Hon'ble Division Bench by placing reliance upon the



decision of the Special Bench in the case of **Sabita Mondal (supra)** held that the State Government could have completed the acquisition proceeding by applying the provision contained in Section 9(3A) of the Land Acquisition Act in pursuance of the notice which was issued by the State Government in compliance with the direction passed by the learned Single Judge but in view of the subsequent development in the Land Acquisition Laws with the enactment of the right to fair compensation and transparency in Land Acquisition, Rehabilitation and Resettlement Act of 2013 and particularly in view of Section 24(1)(a) of the 2013 Act, the State could not have completed the acquisition proceeding by following Section 9(3A) of the Land Acquisition Act, which has since been repealed. The Hon'ble Division Bench expressed the view that the State respondent was required to complete the acquisition proceeding by following the relevant provision of the 2013 Act.

62. In **MAT 1181 of 2019** in the case of **State of West Bengal and ors. vs. Mahadeb Khan and ors.**, which was delivered on 22.12.2023, the property was requisitioned under Section 3 of the 1948 Act and possession of the land was also taken over by the Government. Subsequently, a notice of acquisition under Section 4(1a) of the 1948 Act was issued but no award was made within three years from the date of acquisition notice. A notice under Section 9(3B) of the 1894 Act was issued by the Government but even thereafter no award was made by the Collector and the land owners received no compensation for their land which had been taken over and utilised by the State Government for constructing a public road.
63. In that decision a submission was made that since 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 to the facts of the said case. The Hon'ble Division Bench after noticing the provisions of the 1948 Act held that Section 24 of the 2013 Act basically is a saving section and saves acquisition proceedings from lapsing to the extent indicated thereunder nothing more nothing less. The Hon'ble Division Bench after noting that in the facts of that 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.

64. The Hon'ble Division Bench further held that had the State acted in accordance with law 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 2013 Act. The Hon'ble Division Bench directed the Collector/ the competent authority to initiate proceedings for acquiring the land of the writ petitioners therein under the provisions of the 2013 Act and to complete the entire proceedings including payment of compensation within a specified time frame.
65. Thus, the Hon'ble Division Bench in ***Mahadeb Khan (supra)*** held that even though 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 notices. However, that was not done during the lifetime of the 1894 Act. That could not be done any further after January 1, 2014 i.e., date with effect from which the 1894 Act stood repealed.
66. The contention of the learned advocate for the State that even after repeal of the 1984 Act, proceeding could continue under that Act was not accepted by the Hon'ble Division Bench by placing reliance upon Section 24(1)(b) of the 2013 Act. It was held that 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 as if that Act has not been repealed.
67. Thus, in ***Mahadeb Khan (supra)*** the Hon'ble Division Bench held that after 01.01.2014 notice under Section 9(3A) of the 1894 Act could not be issued and after repeal of the 1894 Act and the proceedings under the repealed Act



could not continue except in cases falling under Section 24(1)(b) of the 2013 Act.

68. **Mandodari Bhakat (supra)** which considered the Full Bench decision of **Sabita Mondal (supra)** was followed by the Hon'ble Division Bench in **Mahadeb Khan (supra)**.
69. In **Mariam Ahmed (supra)** notice under Section 4(1a) of the 1948 Act was published. A notice under Section 9(3B) of the 1894 Act was issued. The Hon'ble Division Bench after noting that in the facts of that case the appropriate notice would have been a notice under Section 9(3A) and not 9(3B) observed that the notice issued under Section 9(3B) of the Land Acquisition Act shall be deemed to be a notice under Section 9(3A) of the said Act and the State was directed to pay compensation by taking the date of notice under Section 9(3A) as the date of reference for the purpose of determining the value of the land under the land Acquisition Act and, thereafter, pass an award in favour of the land loser and pay the award amount to the land loser.
70. In **Mariam Ahmed (supra)** a notice under Section 4(1a) of the 1948 Act and a notice under Section 9(3B) of the 1997 Amendment Act were issued.
71. In the case on hand neither any notice under Section 4(1a) of the 1948 Act was issued prior to expiry of the 1948 Act nor any notice under the 9(3A) or 9(3B) were issued during the lifetime of the 1894 Act. Thus, no acquisition proceeding under the 1894 Act could be said to have been initiated in the case on hand. The decision in **Mariam Ahmed (supra)** being distinguishable on facts cannot come to the aid of the State in the case on hand.
72. The property of the petitioner has been utilised and the State is not in a position to return the said land to the petitioner.
73. It is now well settled that a person cannot be deprived of his property except with due process of law. Since property has been utilised and the State is not in a position to return the same to the land owners, the petitioners are entitled to fair compensation.



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74. For all the reasons as aforesaid the writ petition stands allowed. The respondent authorities are directed to initiate proceedings for acquisition of the land of the petitioners under the 2013 Act and complete the entire proceedings including payment of compensation to the land losers/petitioners as expeditiously as possible but positively within a period of four months from the date of receipt of a server copy of this order.
75. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)