

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

PRESENT:

HON'BLE JUSTICE SUBRATA TALUKDAR

***WP CRC 328 (W) of 2015
With
CAN 63 of 2019
With
CAN 10770 of 2019
In
WP No. 12043 (W) of 2013***

***Lina Datta
-Vs.-
Sukumar Bera & Ors.***

For the Petitioner	: Mr. Saptangshu Basu Mr. Jayjit Ganguly Mr. P. Sancheti Mr. S. Nag
For the State	: Mr. Lalit Mohan Mahata Mr. Prasanta Behari Mahata Mr. T.M. Siddiqui Mr. Nilotpal Chatterjee
For the KMDA	: Mr. Partha Sarathi Basu Mr. Satyajit Talukdar
For the K.M.C.	: Mr. Alok Kumar Ghosh, Mr. Swapan Kr. Debnath Mr. Gopal Chandra Das
Heard on	: 13/03/2020
Judgment on	: 16/12/2020

Subrata Talukdar, J:

The original writ petition, i.e. WP 12043 (W) of 2013 (for short referred to as the writ petition), relates to a piece and parcel of land bearing Kolkata Municipal Premises No. 253C Netaji Subhash Chandra Road, Kolkata-700047 (hereinafter referred to as the said land).

The writ petitioner, being the owner of the said land, was aggrieved by the continued occupation of the said land by the State of West Bengal (for short the State) without being authorized by law to do so. Accordingly, the relief of compensation and damages along with statutory interest corresponding to forty-four years of such unauthorized occupation as on the year of filing of the writ petition in 2013 was claimed by the writ petitioner. The writ petitioner, *inter alia*, pleaded before the Hon'ble Court that all proceedings initiated under Act II of 1948 be declared as lapsed.

It would be now necessary to sieve out the facts as existing before the Hon'ble Court in the pending adjudication. For the benefit of a forthright discussion and to avoid any confusion in the language used to establish the mind of the Hon'ble Court, the sequence of orders necessary for the purpose of this judgement and order are required to be quoted *verbatim* hereinbelow to the extent of their direct relevance: -

“ 17.12.2015

W.P.C.R.C 328(W) of 2015

IV

W.P. 12043(W) of 2013

With

C.A.N. 11886 of 2015

With

C.A.N. 11887 of 2015

With

C.A.N. 11997 of 2015

Youth Club (Naktala) is trying to reopen the writ petition being W.P. No. 12043 of 2013 which was disposed of by this Court as back as on 4th June, 2013 by filing three applications viz, (1) An application for appropriate order, (2) An application under Section 5 of the Limitation Act and (iii) another application seeking leave to sue the Special Officer appointed by this Court on 18th September, 2015, in a contempt proceeding being W.P.C.R.C. 328(W) of 2015 arising out of the said writ petition. For proper appreciation of those three applications filed by the said club, I feel that the background of this litigation should be set out. Accordingly, I give short narration of the background of this litigation leading to filing of these three applications by the stranger club. Admittedly, the writ petitioner's land measuring about 0.7071 acres excluding two shop rooms lying in various plots in mouza Naktala P.S. Jadaupur being municipal holding no. 253C N.S.C. Bose Road, Kolkata, presently under P.S. Netaji Nagar was requisitioned by the State Government under the West Bengal Land Requisitioned and Acquisition Act, 1948 on 28th of November, 1972. Possession of such requisition land of the petitioner was taken over by the State Government on 28th November 1972. On the very same day i.e. on 28th November 1972 the possession of the said land was delivered to the Kolkata Metropolitan Water and Sanitation Authority. Mr. A.K.Roychowdhury, Assistant Engineer, Division VIII, Kolkata Metropolitan Water and Sanitation Authority received the delivery of possession of the said land from the land acquisition officer by acknowledging the receipt of delivery of possession of the said land, on the possession certificate. Since then the said Kolkata Metropolitan Water and Sanitation Authority is in possession. Though the possession of the writ petitioner's said land was taken over under the Said Act on 28th of November 1972, the State Government has not paid any rent compensation to the petitioner. No step was also taken

by the State Government subsequently to acquire the petitioner's said land during the validity of the said act. The said act became inoperative due to efflux of time w.e.f. 1st April 1997 and as such there was no possibility of acquiring the said land of the petitioner under the provision of the said Act, after 1st April, 1997. In course of the hearing of the writ petition Mr. Mahato learned advocate appearing for the State respondents informed the Court that his client has already taken steps for acquiring the said land of the petitioner by issuing notice under Section 9(3A) of the Land Acquisition Act. He prayed for six months time for completing the acquisition proceeding. Though this Court was informed by Mr. Dutta learned senior counsel appearing for the writ petitioner that major part of the requisitioned land remains unutilized but still then after considering the submissions of Mr. Mahato that the State Government is interested in acquiring the said land of the petitioner by applying the provision contained in Section 9(3A) of the land Acquisition Act this Court passed the following direction in the said writ petition on 04th of June, 2013;- "In view of such submission of the learned Counsel of the parties, this court is unable to ascertain the exact requirement of the State and as such, the State Government is directed to take a decision as to whether the entire requisitioned land of the petitioner or part of it, is required by the Government and in the event it is found that the entire land of the petitioner is required by the Government, the State Government will issue notice under Section 9(3A) of the Land Acquisition Act as early as possible and complete the said proceeding positively within a period of six months from the date of communication of this order. It is made clear that in the event the Government decides to utilize only a part of such requisitioned land, then the rest of the land which the Government does not require, should be released and possession thereof should be given to the petitioner immediately thereafter. Such exercise should be completed within four weeks from the date of communication of this order and the acquisition proceeding for the required land should be completed by issuing notice under Section 9(3A) of the said Act within

the period as mentioned hereinabove. Needless to mention here that since the State respondents deprived the petitioner of her enjoyment of the land in question, the State respondents is directed to pay rent compensation in respect of the entire requisitioned land at the statutory rate together with interest 6% per annum for the period from 28th November, 1972 till 31st March, 1997 and will pay damages for wrongful use and occupation of the entire requisitioned land at the market rate together with interest 6% per annum thereon for the period from 1st April, 1997 till the date of issuance of notification under Section 9(3A) of the Land Acquisition Act. Such payment should be made along with payment of the awarded compensation to the petitioner.” Despite such directions were given by this Court, no effective step was taken by the State Government for acquiring the land of the writ petitioner. No notice was issued under Section 9(3A) of the Land Acquisition Act for acquiring the land of the writ petitioner. Thereafter no further proceeding was initiated by the State Government under any other provision or any other law for acquiring the land of the writ petitioner. The direction regarding the payment of rent compensation and / or damages given by this Court in the said writ petition on 04th of June 2013, was also not complied with by the State Government. Under such circumstances the writ petitioner filed a contempt application being W.P.C.R.C. 328(W) of 2015. In course of hearing of the said contempt proceeding this Court was informed by the learned counsel of Kolkata Metropolitan Water and Sanitation Authority that a part of the said requisitioned property measuring about 0.2 acres of land has been utilized by the Kolkata Metropolitan Water and Sanitation Authority for construction of the second lift station in connection with Tollygunj Sewerage Scheme.

.....Since the major part of the petitioner’s land remains unutilized for such a long period and the legal authority of the requiring bodies to retain possession of the said land in question, came to an end w.e.f. 1st April, 1997, this Court after taking note of the fact that

the State Government has not taken any further step for acquiring the land of the petitioner under Section 9(3A) of the Land Acquisition Act, directed the 1st Land Acquisition Collector, Kolkata to recover the un-utilized part of the land of the writ petitioner, from the person whoever is found to be in possession thereof and hand over the physical possession thereof to the writ petitioner positively on 5th October, 2015 at 12 o'clock in the presence of the Special Officer of this Court after measuring the recovered land and also after preparing a map thereof. Mr. R.S. Dutta, Advocate of this Court was appointed as Special Officer in whose presence the actual physical possession of the unutilized land was directed to be made over by the concerned land acquisition collector to the writ petitioner. This Court was also informed by Mr. Mahato, learned advocate for the respondent that a sum of Rs. 50,37,718/- had been assessed by the Land Acquisition Collector toward rent compensation for the period from 28.11.1972 to 30.11.2013. This Court has also worked out a modality for realization of the said assessed rent compensation by the learned Special Officer so that the assessed rent compensation can be paid to the writ petitioner. Pursuant to the aforesaid direction passed by this Court in the said contempt proceeding on 18.09.2015, the land acquisition collector was present at the site on 05.10.2015 but the unutilized land could not be delivered to the petitioner by the said land acquisition collector as he apprehended resistance from the unauthorized occupiers and the police personnel present there, on that date, was insufficient to tackle the apprehended breach of peace that might have occurred, in case force should have been applied to remove the unauthorized occupants therefrom.

..... Tomorrow is the date for handing over possession of the unutilized land of the petitioner by the 1st Land Acquisition Collector, Calcutta to the petitioner. In these set of facts, the stranger applicant namely Youth Club (Naktala) has filed the aforesaid three applications on 11.12.2015. Let me now deal with the merit of those

three applications one by one in the facts of the aforesaid case. In fact reliefs claimed in all these three applications and the statements made therein are almost similar to each other. In Re : C.A.N. No. 1186 of 2015 In this application the applicant has prayed for leave to sue the Special Officer appointed by this Court in W.P.C.R.C. 328(W) of 2015. Incidentally a prayer for recalling of the order passed by this Court on 4th June, 2013 in W.P. 12043(W) of 2013 and the orders dated 18.09.2015 and 09.10.2015 both passed in W.P.C.R.C. 328(W) of 2015, is also made in the said application and pending disposal of the said application, the applicant has prayed for stay of operation of those three orders passed in the writ and/or in the contempt proceeding as mentioned. The sum and substance of the case made out by the said applicant in the said application is that the said club which got itself registered sometime in 1981 started possessing the said land of the petitioner since 1972, and the said club has organized several social beneficial activities on the said land and on some occasion different other clubs sought for their permission for holding various functions and/or sports events etc. on the said land.

..... By referring to the provision containing in Section 27 of the Limitation Act Mr. Chatterjee has submitted that by such long and uninterrupted possession of the said land, the applicant club has acquired title in the suit property by adverse possession. He further submits that the disputed question of fact relating to the rival claims of the parties regarding title to the property cannot be decided by the Writ Court and as such his client intends to file a suit before the appropriate forum for seeking appropriate relief.

..... Let me now consider the other reliefs which the applicant has claimed by way of recalling the aforesaid three orders passed by this Court either in the writ petition and/or in the contempt applicant. The set of facts in which the writ petition was filed has already

been mentioned above. The State Government has took over possession of the petitioner's land on the strength of a requisition order issued by the State Government. Now the State Government has decided to return a part of the petitioner's property which still remains unutilized. In these set of facts, I feel the presence of the applicant, is not at all necessary.

..... I have also considered the documents which were disclosed by the applicant in this application. None of these documents shows that the applicant is possessing the said land as owner thereof. The extract of inspection book of the Kolkata Municipal Corporation which is produced before me by Mr. Chatterjee, learned senior counsel also shows that the name of Smt. Devi Rani Chandra trustee of Sri Harendra Gopa Mitra is recorded as the owner of the suit property. In fact the writ petitioner is claiming interest through the said Trust. The name of the applicant namely, Youth Club is recorded as the "occupier" of the said property. Despite having knowledge of the fact that the name of the trust is recorded as the owner of the suit property, the applicant has not taken any step to record its name as the owner of the suit property after deleting the name of the owners therefrom. No other document is forthcoming from the applicants to show that the applicant is claiming any hostile title in the suit property to the knowledge of the writ petitioner. As such this Court prima facie feels that on the fact of such pleadings, this Court, cannot recorded its satisfaction about the applicant's claim for acquisition of title by adverse possession. Hence the applicant's prayer for recall of the three orders passed by this Court either in the writ petition or in the contempt proceeding, stands, dismissed. Further since the application is disposed of, the other relief which the applicant has claimed by of stay of operation of these ... orders, pending disposal of the instant applicant becomes infructuous. As such those reliefs of the applicant cannot be allowed. The other two applications being C.A.N. No. 11887 of 2015 & C.A.N. No. 11997 of 2015 were also filed by the applicant claiming almost identical reliefs; of course under

different heads and/or captions. After considering the merit of those applications, I feel that those applications also deserve no merit for consideration. As such those applications are also dismissed.

..... In view of the dismissal of these applications I make it clear that the time schedule which was fixed earlier for making over possession of the suit property by the 1st Land Acquisition Collector to the writ petitioner will remain unchanged. A photostat plain copy of this order duly countersigned by the Assistant Registrar (Court), be handed over to the respective parties on usual undertakings.

.....

22.06.2017

W.P.C.R.C. 328 (W) of 2015

In

W. P. No. 12043 (W) of 2013

“The parties have now come to a consensus for settling their disputes between them once for all.

Mr. Majumdar, learned Additional Advocate General submits on instruction from his clients that the State Government has taken a decision to purchase the property in question from the petitioner at a price of Rs.8,77,44,150.00 which is assessed as the base value of the land in dispute by the Inspector General of Registration & Commissioner of Stamp Revenue, West Bengal as indicated in his report dated 4th May, 2017.

Though Mr. Basu, learned senior counsel appearing for the petitioner/applicant disputes the correctness of the report submitted by the Inspector General of Registration & Commissioner of Stamp Revenue, West Bengal, but, considering the report of the said Inspector General of Registration & Commissioner of Stamp Revenue, West Bengal as a whole, this Court is of the view that the valuation of the said property will not be

more than Rs.8,80,00,000/- (Rupees Eight crore eighty lakh only).

Accordingly, this Court directs the State-respondents to deposit the balance amount of sale price i.e. Rupees Two crore eighty lakh only (Rs.8,80,00,000/- minus Rs.6,00,00,000/- = Rs.2,80,00,000/-) with the learned Registrar General of this Court within eight weeks from date.

The writ petitioner/applicant is permitted to withdraw a sum of Rs.2,00,00,000/- (Rupees Two crore only) out of the deposited amount of Rs.6,00,00,000/- together with the interest accrued thereon upon compliance of the necessary formalities in this regard.

Learned Registrar General of this Court is, thus, directed to pay the remainder of the earlier deposit amounting to Rs.2,00,00,000/- (Rupees Two crore only) together with accrued interest on the earlier deposit to the writ petitioner/applicant upon compliance of necessary formalities in this regard.

The writ petitioner/applicant is directed to execute and register a proper deed of conveyance in favour of the State of West Bengal within ten days after receipt of the intimation from the State Government about the deposit of the balance sale price.

The remaining amount which will be deposited by the State Government towards the sale price, as stated above, will be permitted to be withdrawn by the writ petitioner/applicant after execution of the deed of conveyance in favour of the State Government.

Let this matter appear in the list on 31st August, 2017 at 4.00 p.m. for ascertaining compliance of this order.

.....
05.05.2017

W. P.C.R.C. 328 (W) of 2015
in
W.P. 12043 (W) of 2013
(CAN 12188 of 2015)
(CAN 5072 of 2016)

In pursuance of an order passed by this Court on 7th April, 2017 in the contempt proceeding, the valuation report has been submitted by the Inspector General of Retgistration & Commissioner of Stamp Revenue, W.B. in sealed cover.

Let the said report be kept with the record.

Let it be recorded that the copy of the report is supplied to Mr. Basu, learned senior advocate appearing for the petitioner in Court today.

On the prayer of Mr. Basu, learned senior advocate, hearing of this matter stands adjourned till 22nd June, 2017 at 4 P.M.

Let the file be sent to the office of the Learned Registrar General of this Hon'ble Court for compliance of the order passed by this Court on 28th April, 2017.

.....
02.08.2019

W.P.C.R.C. No. 328 (W) of 2015
In
CAN 63 of 2019
In

W.P. 12043(W) of 2013

Party/parties is/are represented in the order of their name/names as printed above in the cause title.

After hearing the parties this Court is of the view that a fresh Joint Survey Report be called for to be held in presence of all the parties and also in the presence of Mr. Suman Das, Empanelled Civil Engineer of the High Court, Original Side residing at P5 Bansdroni Park, H.L. Sarkar Road (South) near Shibdham, Kolkata-700070, (Phone No. 9433084422).

It is expected that the parties shall fix a common date and time in consultation with the Court appointed Civil Engineer. The remuneration of the Civil Engineer will be decided at the next hearing.

*Let the matter next appear under the same heading **“Other Applications” by date on 30th of August, 2019.***

.....
30.08.2019

W.P.C.R.C. No. 328 (W) of 2015

In

CAN 63 of 2019

In

W.P. 12043(W) of 2013

Party/parties is/are represented in the order of their name/names as printed above in the cause title.

This Court is informed that a draft Deed of Conveyance is lying with the Kolkata Municipal Corporation (KMC), the intending purchaser.

Mr. Basu, learned Senior Counsel, draws the attention of this Court to an earlier order of the Hon'ble Single Bench dated 22nd June, 2017. The order, inter alia, reads as follows:-

"The parties have now come to a consensus for settling their disputes between them once for all.

Mr. Majumdar, learned Additional Advocate General submits on instruction from his clients that the State Government has taken a decision to purchase the property in question from the petitioner at a price of Rs.8,77,44,150.00 which is assessed as the base value of the land in dispute by the Inspector General of Registration & Commissioner of Stamp Revenue, West Bengal as indicated in his report dated 4th May, 2017.

Though Mr. Basu, learned senior counsel appearing for the petitioner/applicant disputes

the correctness of the report submitted by the Inspector General of Registration & Commissioner of Stamp Revenue, West Bengal, but, considering the report of the said Inspector General of Registration & Commissioner of Stamp Revenue, West Bengal as a whole, this Court is of the view that the valuation of the said property will not be more than Rs.8,80,00,000/- (Rupees Eight crore eighty lakh only).

*Accordingly, this Court directs the State-respondents to deposit the balance amount of sale price i.e. Rupees Two crore eighty lakh only (Rs.8,80,00,000/- **minus** Rs.6,00,00,000/- = Rs.2,80,00,000/-) with the learned Registrar General of this Court within eight weeks from date.*

The writ petitioner/applicant is permitted to withdraw a sum of Rs.2,00,00,000/- (Rupees Two crore only) out of the deposited amount of Rs.6,00,00,000/- together with the interest accrued thereon upon compliance of the necessary formalities in this regard.

Learned Registrar General of this Court is, thus, directed to pay the remainder of the earlier deposit amounting to Rs.2,00,00,000/- (Rupees Two crore only) together with accrued interest on the earlier deposit to the writ petitioner/applicant upon compliance of necessary formalities in this regard.

The writ petitioner/applicant is directed to execute and register a proper deed of conveyance in favour of the State of West Bengal within ten days after receipt of the intimation from the State Government about the deposit of the balance sale price.

The remaining amount which will be deposited by the State Government towards the sale price, as stated above, will be permitted to be withdrawn by the writ petitioner/applicant after execution of the deed of conveyance in favour of the State Government.

Let this matter appear in the list on 31st August, 2017 at 4.00 p.m. for ascertaining compliance of this order."

Mr. Basu submits that the petitioner, who is a Senior Citizen aged around 75 years, is willing to fulfil her obligations towards completing the registration of the Deed.

Accordingly, the KMC, being the intending purchaser, is directed to execute and register the Deed of Conveyance by the 11th of September, 2019.

The KMC will report execution and registration on the next date.

*Let the matter appear next under the same heading '**Other Applications**' by date on the **13th of September, 2019.**"*

In the midst of the above stated proceedings, the Kolkata Municipal Corporation (KMC) has preferred CAN 10770 of 2019, *inter alia*, reiterating the basic facts and further contending as follows :-

"11. Your petitioner states that the Hon'ble Court decided the valuation of the land measuring about 0.7071 areas excluding 2 shop rooms at the maximum amount of Rs. 8 crore 80 Lacs. It may be stated in this connection that the area of land is 2 bighas 1 cottah 6 chitaks 36 square feet is equivalent to 0.6847 acres and if the area of the 2 shop room being 0.0069 acres is excluded the actual area of the land to be conveyed comes to 0.6778 acres. Therefore, the total valuation under consideration as fixed against the land area being 0.707 acres needs to be proportionately reduced depending on non-availability of the area of the land being 0.0293 acres out of the recorded land area of 0.7071 acres.

12. Your petitioner states that since the writ petitioner could not provide the total area of land

being 0.7071 acres as recorded in the order of the Hon'ble Court, the draft conveyance Deed was prepared on the basis of actual available area of land and consequently the total valuation and/or consideration money being Rs. 8 crores 80 Lacs was proportionately reduced to Rs. 8,43,53,557/- as mentioned in the Draft conveyance Deed. Subsequently, the writ petitioner was forwarded with a draft conveyance deed but the writ petitioner has raised objection to the reduction of amount from Rs. 8,80,00000/- to Rs. 84353557/-. Consequently the matter could not be progressed further towards execution and registration of the Deed of conveyance as directed by this Hon'ble Court.

13. Your petitioner states that your petitioner being the statutory body cannot and should not purchase less area of land with higher consideration amount particularly when the act and/or action of your petitioner is subject to audit scrutiny and furthermore the area of the land as recorded in the order is found to be not available in its entirety vide schedule of land of the deed of settlement."

The KMC thus sought a clarification and/or modification of the orders dated 17-12-2015 and 22-06-2017 to the extent that the area of the land to be conveyed through the Deed of Conveyance be made compatible to the exact valuation and/or consideration to be paid corresponding to such area of land. It would be relevant to mention at this juncture that the interim report of the Appointed Civil Engineer has, *inter alia*, stated as follows :-

"That further after meticulous perusal of the main petition (page no.5) of the petitioner it transpires that there is an arithmetical error or a clerical error in calculating the area of the land-in-

*question. That the petitioner in page 5 {para 3(a)} of his Main Petition had stated the measurement of land-in-question to be more or less 2 Bighas 1 Katha 6 Chattaks and 36 sq. ft. (as recorded in the registered Deed of Settlement dated 16th January, 1958). As per commonly used Land Measurement Units in West Bengal, 1 Acre is 3 Bigha(B) or 60 Cottahs/Kathas(K), 1 Bigha is 20 Cottahs/Kathas and 1 Cottah/Katha(K) is 720 sq.ft. or 16 Chattaks/ Chitaks(C). Thus, due to wrong arithmetical calculation or clerical error the area of the land-in-question was described to be more or less around **0.7071 acre** instead of more or less around **0.69042 acre** or 41 kathas 306 square feet or 29826 square feet.”*

Having heard each of the Ld. Senior Counsel for the appearing parties and considering the materials placed, this Court arrives at the following findings :-

- A)* That indisputably the said land was in possession of the State in a manner that such continued possession and/or occupation without authority of law acted to the extreme prejudice of the writ petitioner.
- B)* That the writ petitioner, being a septuagenarian lady, was rightly apprehensive about her future as the owner of the said land. Accordingly, the writ petitioner, faced with inaction on the part of the State to take a decision concerning the said land, was left with no alternative but to seek relief invoking the prerogative writ jurisdiction of the Hon’ble Court.
- C)* Admittedly, by the order dated 22nd of June 2017 (supra), the Hon’ble Court was, *inter alia*, pleased to record that the

parties have now come to a *consensus* for settling the disputes between them once for all. The *consensus* was noticed again by the solemn order dated 30th August; 2019(supra).

The Hon'ble Court was further pleased to record by its order of 22nd of June 2017 that in terms of a report from the Inspector General of Registration and Commissioner of Stamp Revenue, West Bengal dated 4th May, 2017 the *base value* of the said land in dispute stands assessed at Rs. 8,77,44,150/-.

That also by the solemn order dated 22nd June, 2017, the Hon'ble Court was of the view that the valuation of the said land will not be more than Rs. 8,80,00,000/- (Rs. Eight crores Eighty lakhs only). The Hon'ble Court directed that the petitioner be permitted to draw specified sums of money out of the deposited sale value and the parties to execute a Deed of Conveyance within a further specified period.

D) It is also a matter of record that by filing *CAN 10770 of 2019*, the *KMC* seeks an order restraining the Ld. Registrar General of this Court from finally releasing in favour of the writ petitioner the sum remaining out of Rs. 8.8 Crores lying with the Ld. Registrar General in terms of the order dated 22nd June, 2017 (supra). Be it also noted that as of now, as also recorded by this Hon'ble Court vide its order dated 22-11-2019, a sum of Rs. 80 Lakhs along with accrued interest

lies with the Ld. Registrar General. On the one hand, the petitioner claims such sum and, on the other hand, the *KMC* takes the stand that since the area of land stands now measured at around 0.69042 acre in place and stead of 0.7071 acre, the valuation of the said land stood reduced to Rs. 8,43,53,557/- in place and stead of 8,80,00000/-. The writ petitioner is thus not entitled to the difference in valuation of approx Rs. 37 lakhs and the Hon'ble Court should now direct registration of the sale deed for a total area of 0.69042 acre valued at Rs. 8,43,53557/- only.

E) Upon a deep consideration of the rival viewpoints presented, this Court finds the *KMC* waters more alluring than deep. It is on record that the *consensus* was recorded by an authority none less than the Hon'ble Court. Such *consensus* was recorded in 2017 based on the Report of the Inspector General of Stamp and Revenue dated 4th May 2017. The Report adopted a *base value* of the said land quantified approx. at Rs. 8.8 crores as also recorded by the Hon'ble Court. The application for clarification and/or modification of the order passed in June 2017 was filed by *KMC* around two years later in 2019.

F) It is also required to be remembered that the adoption of the *base value* by the Hon'ble Court reflected the consent of the State respondents in the following words:-

“Learned Additional Advocate General submits on instruction from his clients that the State Government has taken a decision to purchase the property in question from the petitioner at a price of Rs. 8,77,44,150/- which is assessed as the base value of the land in dispute by the Inspector General of Registration & Commissioner of Stamp Revenue, West Bengal as indicated in his report dated 4th May, 2017.”

G) On the basis of the consent so recorded, the Hon’ble Court while noticing that the *correctness of the report submitted by the Inspector General of Registration & Commissioner of Stamp Revenue, West Bengal is disputed by the Ld. Senior Counsel for the writ petitioner. Considering the report of the said Inspector General of Registration & Commissioner of Stamp Revenue, West Bengal as a whole* (emphasis supplied), *this Court is of the view that the valuation of the said property will not be more than Rs. 8,80,00000/- (Rupees Eight Crore Eighty Lac only).*

H) This Court cannot sweep under the carpet the overwhelming fact that all subsequent directions of the Hon’ble Court pursuant to which the parties are expected to act trace their source to the *consensus* and the *base value*. The directions and the action of the parties point to the culminating point of execution of the sale deed.

I) In the light of the above discussion, it would be an unconscionable act on the part of this Court to allow *KMC* to

break the *consensus*, plainly speaking at the eleventh hour. To quote the ratio expressed by a Hon'ble Division Bench of the Bombay High Court, *In Re: Tukaram Mahadu Tandel (Plaintiff/Appellant) vs. Ramchandra Mahadu Tandel (Defendants/Respondents)* as reported in AIR 1925 Bombay 425:-

"It appears to us clear than when a defendant has by concession of the plaintiff acquired rights which could not have otherwise existed, it is not open to the plaintiff who has made that concession, afterwards to annul its effect by withdrawing the suit."

J) To the considered mind of this Court, having conceded to the adoption of the *base value* of the said land on an *as-is-where-is* basis, it is not open to the KMC to resile therefrom. The expression '*as-is-where-is*' stands defined in AIR 2013 Supreme Court 1241, *In Re: Dr. B. S. Chauhan and Vs. Gopala Gowda, JJ.* Paragraph 22 of the same reads as follows :-

"22. The instant case is required to be decided in the light of the aforesaid settled legal propositions.

The terms and conditions incorporated in the lease deed reveal that, the allotment was made on "as-is-where-is" basis. The same was accepted by the respondent-company without any protest, whatsoever. The lease deed further enabled the appellant to collect charges, in case it decided to provide the approach road. Otherwise, it would be the responsibility of the respondent-company to use its own means to develop such road, and there was absolutely no obligation placed upon the appellant to provide to the respondent the access road. As the respondent-company was responsible for the

creation of its own infrastructure, it has no legal right to maintain the writ petition, and courts cannot grant relief on the basis of an implied obligation. The order of the High Court is in contravention of clause 2(g) of the lease deed.”

- K)** It thus, axiomatically follows that at the moment when the parties expressed *consensus* in resolving their issues as recorded by the Hon’ble Court on the 22nd of June 2017, all parties, including the *KMC*, were bound to execute the sale deed on the basis of the terms of the *consensus* without any protest whatsoever. It must be reckoned that the Hon’ble Court intended that the parties should not further split hairs on any issue having proceeded to issue binding directions taking notice of the base and/or the template value of the land at Rs. 8.8 crores. Furthermore, the Hon’ble Court was assisted in arriving at its conclusions on the basis of a Report from the Inspector General of Stamp & Revenue, Government of West Bengal. Needless to also add that the adjustments *inter se* the consenting parties on any detail, including quantum and value of the said land, were presumed to be so adjusted by the parties before consenting to bring them on their own volition under the canopy of the order dated 22nd June, 2017 followed by subsequent orders.
- L)** The order dated 22nd June, 2017 has been acted upon and thus attained a finality with the deposit of money with the Ld. Registrar General and its disbursement from time to time

under successive orders of the Hon'ble Court. It must be also noticed that the petitioner had approached the Hon'ble Court with a claim to compensation for the long unauthorized user of the land by the State respondents. It needs no repetition that fixation of the *base value* of the land at the instance of the State Respondents themselves, including the *KMC*, intended to give the much needed quietus to a long pending dispute.

In the backdrop of the above discussion, it is directed that the parties should complete and execute the sale deed within an outer limit of eight weeks from this date, failing which the writ petitioner shall be entitled to claim the balance fund lying with the Ld. Registrar General by applying before the Ld. Registrar General after expiry of the said period of eight weeks. Upon such application being made, the balance fund with the interest accrued thereon shall be disbursed in favour of the writ petitioner subject to execution of an undertaking by the writ petitioner and/or her legal heirs, executors and assigns to execute the Sale Deed of the said land whenever called upon to do so in writing by the *KMC*.

WPCRC 328 (W) of 2015 stands thus **disposed of**.

CAN 63 of 2019 and **CAN 10770 of 2019** also stand **disposed of**.

There will be no order as to costs.

Parties are permitted to act on a server copy of this order downloaded from the official website of the Hon'ble Court.

Urgent certified photocopies of this judgment, if applied for, be given to the learned advocates for the parties upon compliance of all formalities.

(Subrata Talukdar, J.)