

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

Hon'ble Justice Shampa Sarkar

W.P.A. No.12349 of 2011
with
CAN 1 of 2012

Avijeet Daw & ors.
vs.
Union of India & ors.

For the petitioners : Mr. Debayan Bera,
Mr. Sakti Prasad Chakrabarty.

For the respondent Nos. 5 & 6 : Mr. Susanta Pal,
Mr. Ananda Dulal Sarkar.

For the State : Md. Galib,
Ms. Subhra Nag.

Hearing concluded on: 02.02.2021

Judgment on: 22.07.2021

Shampa Sarkar, J.:-

1. The predecessor-in-interest of the petitioner No. 1, as also the petitioners No. 2 and 3 as joint owners of plot Nos. 43K, 43A and 43A/1A, Narkeldanga Main Road, Kolkata – 700054, filed this writ petition being aggrieved by a notification dated December 27, 2010, issued under Section 4(1) of The Land Acquisition Act, 1894 (hereinafter referred to as the said Act) under Form 3D. The notice contained the substance of notification, for acquisition of premises No. 43K, Narkeldanga Main Road, Kolkata measuring about 0.1216 acres. The purpose of acquisition was to construct the inlet and outlet of the Phoolbagan Metro Railway Station under the “East-West Metro Corridor Project” (hereinafter referred to as the said project). The facts of the case are narrated hereunder.

2. The notification under Section 4(1) of the said Act was published in two Bengali news papers Ganashakti and Aajkal on March 24, 2010 and also in the Times of India on 26th March 2010. The Gazette Notification of the same was made on April 9, 2010. Upon coming to know of the proposed acquisition, the petitioners filed an objection dated July 14, 2010, under Section 5A of the said Act, on various grounds.

3. Notice containing the substance of the notification under Section 4(1) in Form 3D was served upon the petitioners on December 27, 2010 and the public notice of the substance of the notification was displayed at a convenient place in the locality on December 28, 2010. This was the last date of publication. On being served with a copy of the Form 3D on December 27, 2010, the petitioners filed another objection dated January 21, 2011, under Section 5A of the said Act.

4. A notice of hearing of the objection filed by the petitioners was served upon them and March 2, 2011 was fixed for hearing. On March 2, 2011, the petitioners attended the hearing and took an adjournment. The petitioners then wrote a letter to the Managing Director of Kolkata Metro Rail Corporation Limited (KMRCL) requesting inspection of the layout plan, Inspection Book (IOB) and other documents which were relevant for the hearing of their objection. The petitioners' letter dated March 8, 2011 was not replied to by the metro railway authorities and the petitioners sent a reminder on March 21, 2011.

5. March 29, 2011, was thereafter fixed for hearing of the objection and on that day, the Learned Advocate of the petitioners prayed for an adjournment. According to the petitioners, no further hearing was held. The writ petition was then filed, alleging illegality in the proposed acquisition. It was alleged that the notification under Section 4(1) of the said Act was defective and non-supply of documents by the metro railway authorities prior to the objections hearing, vitiated the process. It was the specific case of the petitioners in the writ petition that their objections had not been disposed of and was pending.

6. The writ petition was filed on or about July 27, 2011. The writ petition was first heard on August 17, 2011 by a coordinate bench, in the presence of the learned Advocate for the State of West-Bengal. The petitioners were directed to serve a copy of the writ petition upon the Union of India. Thereafter the writ petition appeared on September 19, 2011. The learned coordinate bench directed affidavit-in-opposition to be filed within November 18, 2011, reply within November 25, 2011. It was further ordered that the pendency of the writ petition would not prevent the First Land Acquisition Collector, Kolkata, that is, the respondent no.3 from disposing of the objection filed by the petitioners under Section 5A of the said Act, by passing a reasoned order in accordance with law, and after giving them an opportunity of hearing. It was further directed that the action taken by the respondents would abide by the result of the writ petition. The said order was passed without prejudice to the rights and contentions of the parties and subject to further orders. The order of this court was communicated to the First Land Acquisition Collector, Kolkata and also to the Metro Railway Authority.

7. The petitioners were not called for any further hearing of their objection after March 29, 2011. The declaration under Section 6(1) of the said Act was published in the Times of India on January 6, 2012, in 'Pratidin' on January 7, 2012 and in the Calcutta Gazette on March 5, 2012. Public notice of the substance of declaration in Form 5B was made in the locality on April 25, 2012. A notice under Section 9 of the said Act was served upon the petitioners on August 17, 2012. On September 6, 2012 the petitioners' advocate filed another objection before the Land Acquisition Collector, Kolkata. A notice under Section 12 (2) of the said Act dated September 13, 2012 was issued intimating the petitioners that an enquiry under Section 11 of the said Act would be held on September 28, 2012. A notice was hung in the premises on April 9, 2013, indicating that the award had been declared on April 8, 2013. The petitioners did not attend the hearing that was scheduled on September 28, 2012. A notice of taking over possession was hung in the premises on April 9, 2013 and the possession

was taken over on April 17, 2013. On May 17, 2013, the petitioners filed their respective references under Section 18 of the said Act before the Learned Special Land Acquisition Judge, Alipore (hereinafter referred to as the learned L.A. Judge) without prejudice to their rights and contentions in the writ petition. Records also reveal that the petitioners filed an application before the Learned L.A. Judge for investment of the sum awarded in an interest bearing fixed deposit in a nationalized bank, without prejudice to their rights and contentions in the pending writ petition. By order dated August 7, 2017, the said application was disposed of by the learned L.A. Judge and the prayer was allowed without prejudice. Subsequently, the original petitioner No.1 expired and his son Avijeet Daw, as the executor of his Will was substituted in his place. The original respondent No.5 was also substituted by Kolkata Metro Rail Corporation Limited (KMRCL) by an order of this court. The petitioners were also granted leave by this Court to file a supplementary affidavit to bring on record the subsequent events as narrated hereinabove.

8. The respondents failed to file the affidavit-in-opposition as directed by the court. The writ petition was pending before this court for a long time. Thereafter, this court extended the time for filing the respective affidavits-in-opposition. On March 4, 2019, the affidavit-in-opposition filed by the KMRCL was taken on record. A prayer was made by the learned advocate for the State of West Bengal for further extension of time for filing the affidavit-in-opposition. The affidavit-in-opposition on behalf of State of West-Bengal was filed on July 5, 2019, affidavit in reply of the petitioners was also filed and the matter was heard at length.

9. The State of West-Bengal filed three affidavits-in-opposition. It was the contention of the state respondents in their first affidavit, that the notice in Form 3D dated December 27, 2010 was served upon the petitioners on December 27, 2010 and displayed at a convenient place in the locality on December 28, 2010. That the objection dated January 21, 2011 filed by the petitioners under Section 5A of the said Act, was disposed of by the First

Land Acquisition Collector, Kolkata on March 31, 2011 and a report with the recommendation was forwarded for the decision of the government. The contentions of the state respondents in the affidavit-in-opposition was that the declaration under Section 6(1) was authenticated on December 28, 2011, and the entire process of acquisition as per Sections 8, 9 and 11 of the said Act was complete. That the award was declared and the possession of the land was taken on April 17, 2013. That the sum awarded was remitted to the court of the learned L.A. Judge, Alipore as a civil deposit. The order disposing of the objection and the recommendation of the First Land Acquisition Collector were annexed to the affidavit-in-opposition.

10. It was contended by of the state respondents in their second affidavit that the authentication of the declaration under Section 6(1) of the said Act was made in the file by the Joint Secretary to the Government of West Bengal on December 28, 2011 and the last date of public notice containing the substance of notification under Section 4(1) of the said Act was December 29, 2010 i.e. when the notice was served upon the Commissioner Kolkata Municipal Corporation. The declaration under Section 6(1) of the said Act according to the state respondents, was well within time. It was further contended that as the petitioners had filed an application under Section 18 of the said Act, challenging the quantum of the award before the learned L.A. Judge and had also filed an application for investment of the awarded sum in an interest bearing fixed deposit in a nationalized bank, the petitioners had waived their right to challenge the acquisition proceeding, more so, when the project was complete.

11. Strangely, when the writ petition was heard on August 17, 2011 and thereafter on September 19, 2011, in the presence of the learned Advocates for the state respondent, the fact that the objection dated January 21, 2011 filed by the writ petitioners, had been disposed of on March 31, 2011, much prior to the first date of hearing of the writ petition had not been submitted before the Court.

12. Mr. Bera, learned Advocate appearing on behalf of the petitioners restricted his arguments to non-compliance of the provisions of Section 5A and Section 6(1) of the said Act. He submitted that the entire acquisition proceeding was *void ab initio* for non-compliance of the above-mentioned mandatory provisions of law.

13. Mr. Bera contended that the Land Acquisition Collector did not grant a reasonable opportunity to the petitioners to place their objections effectively. That the objection under Section 5A of the said Act was not disposed of in accordance with law and the order was ante-dated. According to him, had the objection been disposed of as early as on March 31, 2011, the fact would have been disclosed before this Court by the learned advocates for the state respondents on the first date of hearing. Rather, an order was passed by this Court to the effect that the pendency of the writ petition would not stand in the way of the state respondents, from disposing of the said objection. He submitted that the order disposing of the objection was also for the first time disclosed in the affidavit-in-opposition and had not been served upon the petitioners. This amounted to violation of the principles of natural justice. On the last date of hearing i.e. on March 29, 2010, the petitioners prayed for an adjournment. The objection had neither been disposed of nor any hearing had taken place. He further submitted that even assuming that the order was passed on March 31, 2011, none of the points raised by the petitioners had been considered. He urged that the objections with regard to the legality of the acquisition, description and measurement of the land and the availability of other alternative sites etc., had not been dealt with by the First Land Acquisition Collector who was required to dispose of each and every point raised in the objection, upon making an enquiry. Once the above exercise was over, only then the recommendations on such objections was to be made to the concerned department of the government. On this issue he relied on the following decisions:-

- (a) ***Daga Auto Service Pvt. Ltd. and another vs. The Land Acquisition Collector (Special Railway Cell)*** reported in ***AIR 1978 Calcutta 1***,
- (b) ***Shri Mandir Sita Ramji vs. Governor of Delhi and others*** reported in ***AIR 1974 SC 1868***,
- (c) ***Women's Education Trust and Another vs. State of Haryana and Others*** reported in ***(2013) 8 SCC 99 and***
- (d) ***Surinder Singh Brar and Others vs. Union of India and Others*** reported in ***(2013) 1 SCC 403***.
- (e) ***Gojer Brothers Private Limited and Another vs. State of West Bengal and others*** reported in ***(2013) 16 SCC 660***.
- (f) ***Kedar Nath Yadav vs. State of West Bengal and Ors.***, reported in ***(2017) 11 SCC 601. and***
- (g) ***Radhy Shyam (Dead) through LRS and ors. vs. State of Uttar Pradesh and ors.*** reported in ***(2011) 5 SCC 553***.

14. Mr. Bera next contented that in the affidavit-in-opposition dated July 5, 2019 filed by the First Land Acquisition Collector, it had been admitted that the publication of the substance of notification in the locality was made on December 28, 2010. According to Mr. Bera, the period of one year from December 28, 2010 which was the last date of the publication, would end on December 27, 2011. Even assuming that the authentication of the declaration under Section 6(1) of the said Act, in the file of the State Government was made by the Joint Secretary to the Government on December 28, 2011, there was still a delay of one day in the authentication of the declaration. Mr. Bera contented that the legislative intent was that the declaration should be made within a period of one year from the last publication of the substance of notification. In this case, the publication in the locality was the last of such dates, i.e., December 28, 2010. He referred to the relevant portions of the affidavit-in-opposition as also to the order of the First Land Acquisition Collector dated March 31, 2011, disposing of the objection of the petitioners under Section 5A of the said Act, where it had been categorically mentioned by the said authority that the public notice in

the locality at a convenient place as per Section 4(1) of the said Act was made on December 28, 2010. He also referred to the affidavit-in-opposition filed on behalf of KMRCL where these facts had also been admitted. He drew the attention of the Court to a document dated January 10, 2012 which was a letter written by First Land Acquisition Collector, Kolkata to the Joint Secretary to the Government of West-Bengal, Land & Land Reforms Department. By the said letter, the First Land Acquisition Collector, Kolkata intimated the concerned department that the period of one year for making the declaration had lapsed and no publication of the same could be done.

15. According to Mr. Bera, the plea of the acquiring body that the period of one year should be calculated from December 29, 2010 that is, the date when the Commissioner of the Kolkata Municipal Corporation received a copy of the public notice was not acceptable in law. On the issue of lapse of the acquisition proceeding in view of the expiry of the period of one year in making the declaration under Section 6(1) of the said Act, Mr. Bera relied on the following decisions:-

- (a) ***Padmasundara Rao(Dead) and Others vs. State of T.N. and others*** reported in ***AIR 2002 SC 1334***,
- (b) ***Ashok Kumar and Others vs. State of Haryana and Another*** reported in ***AIR 2007 SC 1411***.
- (c) ***Krishi Utpadan Mandi Samiti and Anr. vs. Makrand Singh and others*** reported in ***(1995) 2 SCC 497*** and
- (d) ***Eugenio Misquita and Others vs. State of Goa and Others*** reported in ***(1997) 8 SCC 47***.

16. Mr. Bera thus submitted that the land acquisition proceeding insofar as, the land of petitioners is concerned, be set aside for non compliance of the statutory provisions of Section 5A and Section 6(1) of the said Act. He also submitted that the court should mould the relief in this case by directing the state respondents to proceed afresh under the provisions of the "The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to the Act of

2013). He relied on the decision of ***K.B. Ramachandra Raje Urs (Dead) by legal representative vs. State of Karnataka and Others***, reported in ***(2016) 3 SCC 422***.

17. On the point of waiver, Mr. Bera submitted that where a proceeding was vitiated and acquisition was declared to be mala fide, acquiescence by the petitioners was of no consequence. He relied on the following decisions:-

(a) ***P.Dasa Muni Reddy vs. Appa Rao*** reported in ***AIR 1974 SC 2089***,

(b) ***Vyalikaval House Building Co-op, Society vs. V. Chandrappa and Others*** reported in ***AIR 2007 SC 1151***.

18. He submitted that the petitioners filed the reference under Section 18 of the said Act before the learned L.A Judge, and had prayed for investment of the awarded amount in an interest bearing fixed deposit in a nationalized bank, without prejudice to their rights and contentions in the writ petition. In support of his contention, he relied on the decision of the Hon'ble Apex Court in ***Superintendent (Tech. I) Central Excise, I.D.D Jabalpur and others vs. Pratap Rai*** reported in ***AIR 1978 SC 1244***.

19. Mr. Susanta Paul learned Advocate appearing on behalf of the Kolkata Metro Rail Corporation Limited (KMRCL) contented that once the acquisition was complete, the award had been declared, the money had been deposited in court, the construction of inlet and outlet of Phoolbagan Metro Railway station on the said premises in question was over and the petitioners had filed an application for enhancement of the awarded sum before the learned L.A. Judge by filing an application under Section 18 of the said Act, nothing remained to be decided in the writ petition. He submitted that when the petitioners move the learned L.A. Judge for an order for investment of the sum awarded in an interest bearing fixed deposit in a nationalized bank, they had accepted the acquisition proceeding, and the writ petition had become infructuous. According to Mr. Paul, the grievance of the petitioners with regard to taking over the passage comprising premises No. 43A/1A

Narkeldanga Main Road Kolkata by KMRCL ought to be decided by a civil court.

20. Mr. Galib, learned Advocate appearing on behalf of the state respondents vehemently denied the allegations that the order disposing of the objection filed under Section 5A of the said Act was ante-dated. He denied that the order was passed in violation of the principles of natural justice and stated that the order was well reasoned. He urged that the question of violation of principles of natural justice by the First Land Acquisition Collector did not arise, as the petitioners by asking for repeated adjournments had deprived themselves of the right to be heard. He submitted that the petitioners intentionally took adjournments at the hearing only to frustrate the entire purpose of the land acquisition. The intention was to delay so that the process would automatically lapse. In support of this contention, he relied on the decision of Apex Court in ***Aircraft Employees' Housing Cooperative Society Ltd. vs. Secretary, Rural Development and Panchayat Raj, Govt. of Karnataka, Bangalore and Others.*** reported in **(1996) 11 SCC 475**. He submitted that the petitioners had proceeded before the Learned L.A. Judge, under Section 18 of the said Act and prayed for deposit of the awarded sum in an interest bearing fixed deposit in a nationalized bank, which amounted to waiver of their right to challenge the acquisition proceeding itself.

21. Mr. Galib submitted that no useful purpose would be served at this stage in remitting back the matter to the First Land Acquisition Collector, Kolkata to hear out the objections once again, as the project for which the land had been acquired was complete. Fresh hearing would only be a mere ritual as the acquisition was a foregone conclusion. He relied on the decision of the Apex Court in ***Dharmapal Satyapal Limited vs. Deputy Commissioner of Central Excise, Guhati and others,*** reported in **(2015) 8 SCC 519**, in this regard.

22. Mr. Galib further submitted that the respondents were not bound by law to dispose of numerous objections filed by the petitioners. Disposal of

one such objection would amount to compliance of the requirement of the statute. He contended that the scope and ambit of objections under Section 5A of the said Act was limited and restricted to the questions as to whether the premises were required for a public purpose or not. The objections with respect to legality of the acquisition, description of the land, the availability of other alternative land, were not matters to be decided at the stage of disposal of the objections but were to be decided during the proceedings, under Sections 9 and 10 of the said Act. Mr. Galib submitted that the Hon'ble Apex Court in the decision of ***Executive Engineer, Jal Nigam Central Stores Division, U.P. Vs. Suresha Nand Juyal alias Musa Ram (Deceased) by LR's and others.***, reported in ***AIR 1997 SC 2180***, held that where an award had been made and symbolic possession had been taken by the State, the High Court ought not to interfere with such acquisition proceedings. He relied on the decision of the Apex Court in ***Abdul Hussain Tayabali and others vs. State of Gujarat and Others.*** reported in ***AIR 1968 SC 432***, in support of his contention that neither Section 5A nor any other provision of the said Act laid down that a second opportunity of hearing should be given while disposing of the objection filed by the petitioners.

23. According to Mr. Galib, the allegation of violation of the principles of natural justice was baseless as the procedure prescribed by law had been followed by the state respondents. He relied on decision of the Allahabad High Court in ***Chandan Singh Gosain vs State of U.P and another*** reported in ***AIR 1980 All 106***, in support of his contention that Section 5A did not require the Collector to pass any positive order either accepting or rejecting the objection. The scope and the object of Section 5A of the said Act, was limited to determination of the purpose of acquisition.

24. Mr. Galib relied on the decisions of the Apex Court in ***Manimegalai vs. Special Tahasildar (Land Acquisition Officer) Adi Dravidar Welfare*** reported in ***AIR 2018 SC 2020*** and decision of this Court in ***Saktipada Mandal & Others vs. Collector, District Hooghly and Others.***, reported

in **AIR 1976 Cal 282**, in support of his contention that the expression 'public purpose' was not capable of a precise definition and it was not for the court to decide whether the particular purpose for which the acquisition was proposed was a public purpose or not. It was not within the competence of the court to decide what would be 'public purpose'.

25. Mr. Galib next urged that a declaration under Section 6(1) of the said Act could be challenged only on the ground of mala fide and not on the ground of delay or otherwise. He relied on the decision of Apex Court in **Ganesh Jha and others vs. State of Bihar and Others.**, reported in **AIR 1976 SC 923**.

26. With regard to delayed declaration under Section 6(1) of the said Act, Mr. Galib submitted that the period of one year should be calculated from December 29, 2010 i.e. the date when the Commissioner of Kolkata Municipal Corporation was served with the notice under Section 4(1) of the said Act. The authentication of the declaration having been made in the files of the concerned department on 28th December 2011, there was no delay in making the declaration under Section 6(1) of the said Act. He contended that there was a presumption of correctness in the acquisition proceeding which was done by the government in exercise of the power conferred by the statute. He further submitted that publication of declaration in the newspaper and in the Gazette were ministerial acts and minor irregularities were not relevant for the purpose of the calculation of period of one year as envisaged under Section 6(1) of the said Act. He relied on the decisions passed in **Venkataswamappa v. Special Deputy Commissioner (Revenue)** reported in **(1997) 9 SCC 128** and **Land Acquisition Collector and anr. v. Durga Pada Mukherjee and ors.**, reported in **(1980) 4 SCC 271**, in support of his contention that a declaration could be challenged only on the ground of *mala fide* and colourable exercise of power.

27. Next, Mr. Galib submitted that the petitioners had waived their right to challenge the acquisition proceeding as the filing of an application before the learned L.A Judge, under Section 18 of the said Act, would mean that

the petitioners were aggrieved by the quantum of the awarded sum and not by the acquisition itself. He further contented that when the petitioners asked for investment of the awarded amount in an interest bearing fixed deposit in a nationalized bank so that it may earn interest, such action itself proved that the petitioners were only interested in enhancement of the awarded amount. He submitted that the petitioners could not be allowed to carry on parallel proceedings in two different fora. On the point of waiver Mr. Galib relied on the decision of Hon'ble Apex Court in ***Provash Chandra Dalui and another vs. Biswanath Banerjee and another*** reported in ***AIR 1989 SC 1834***.

28. I have heard the rival contentions of the parties. The provisions of the said Act which are relevant in this case are Sections 4(1), 5A and 6(1).

Section 4(1) of the said Act is quoted herein below for convenience:-

“4. Publication of preliminary notification and powers of officers thereupon.-

(1) Whenever it appears to the [appropriate Government] that land in any locality [is needed or] is likely to be needed for any public purpose [or for a company], a notification to that effect shall be published in the Official Gazette [and in two daily newspapers circulating in that locality of which at least one shall be in the regional language], and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality [(the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification)].

29. This sub-section provides that the substance of the notification should be published in the official gazette and in two daily newspapers circulating in the locality of which at least one should be in the regional language and the Collector should also cause public notice of the substance of such notification in the concerned locality at a convenient place. In this case as per the records disclosed in the affidavit-in-opposition, the date of publication of the substance of notification in the locality as it appears from the records was 28th December 2010. This was the last date of series of

publications under Section 4(1) of the said Act and thus the date of publication of the notification.

30. In the decision of ***Ajay Krishan Shinghal and others vs. Union of India and Others*** reported in **(1996) 10 SCC 721**, the Apex Court reiterated the settled principle of law that publication of the notification under Section 4(1) in the gazette and publication of substance at a convenient place in the locality were mandatory requirements and once the publication was done in the locality, the second limb of the requirement under Section 4(1) stood complied with.

31. Section 5A(1) of the said Act gives the right to the land owner to object to the notification. Section 5A(1) is quoted below for convenience:-

“5-A. Hearing of objections.

(1) Any person interested in any land which has been notified under section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a company may, [within thirty days from the date of the publication of the notification], object to the acquisition of the land or of any land in the locality, as the case may be.”

32. Here, as soon as the notification under Section 4(1) of the said Act was made in the official gazette, the petitioners had filed an objection even before notice of the substance of the notification under Section 4(1) in Form 3D was served upon the petitioners. The respondent did not respond to such objection. Thereafter upon receipt of the Form 3D, again the petitioners on January 21, 2011 filed their objections primarily on the following points:-

- (a) The description of the plot of the land to be acquired did not tally with the measurement and as such the notification suffered from incorrect description of the land.
- (b) That alternative lands were available for the construction of the inlet and outlet of Phoolbagan metro railway station.
- (c) The Greek Cemetery land which was no more in use, could be used for the same purpose.

- (d) To prevent undue hardship, the premises of the petitioners proposed to be acquired which primarily served the purpose of ingress and egress to their dwelling house, should not be acquired before the availability of the alternative lands was enquired into.
- (e) Under the garb of acquiring premises No. 43K Narkeldanga Main Road, Kolkata, the respondents were also acquiring the premises No. 43A/1A which was an exclusive property of the petitioners.
- (f) The possession plan differed from the execution plan of the project.

33. The writ petition was filed on or about July 27, 2011 and was first heard on August 17, 2011 by a coordinate bench. The petitioners were directed to serve a copy upon the Union of India. The learned advocate for the state respondents was present on August 17, 2011. Thereafter, the writ petition appeared on September 19, 2011 and a learned coordinate bench directed affidavit-in-opposition to be filed within November 18, 2011, reply thereto within November 25, 2011. It was further directed that the pendency of the writ petition would not prevent the First Land Acquisition Collector, Kolkata, the respondent no.3 herein, from disposing of the objection filed under Section 5A of the said Act by passing a reasoned order, in accordance with law after giving the petitioners an opportunity of being heard. It was further directed that the action taken by the respondents would abide by the result of the writ petition. The said order was passed by this court without prejudice to the rights and contentions of the parties and subject to further orders that may be passed. The order dated March 31, 2011, disposing of the objection under Section 5A of the said Act had been annexed to the affidavit-in-opposition filed by state respondent. That was the first time that the writ petitioners came to know of the order and got a copy thereof. Even during the hearing of the writ petition on August 17, 2011 and September 19, 2011, the state respondents did not disclose the fact that the First Land Acquisition Collector by an order dated March 31, 2011 had already disposed of the objection filed by the petitioners. Thus, there appears to be arbitrariness in the action of the state respondents in disposing of the objection. The respondents have not disclosed any document showing that

the said order dated March 31, 2011, had ever been served upon the petitioners. The petitioners were entitled to a copy of the said order and non-service of the copy of the said order upon the petitioners amounts to violation of the principles of natural justice. Due to lapse of time, the said project was complete. Thus, the petitioners were deprived of an opportunity to challenge the order disposing of their objection. In the decision of ***Managing Director ECIL Hyderabad and others vs. B. Karunakar and others*** reported in **(1993) 4 SCC 727**, the Hon'ble Apex court held that non service of any order passed pursuant to any enquiry or proceeding, upon the person affected by that order, would amount to violation of the principles of natural justice.

34. The petitioners were called for hearings on March 2, 2011 and March 29, 2011. On March 2, 2011, the petitioners' prayer for adjournment was allowed. On March 29, 2011, the petitioners' prayer for adjournment was rejected. The petitioners' request before the metro railway authority to allow them to see the inspection book (IOB), site plan and maps were also not entertained. However, records do not reveal that a proper hearing on the objections had taken place on March 29, 2011. It is also not recorded whether the petitioners' learned advocate had refused to participate in the hearing. Strangely, the order mentions that the hearing was concluded on March 29, 2011 and the order was passed on March 31, 2011. The petitioners were completely unaware of such order. No order was communicated to the petitioners. Neither any submissions of the petitioners' advocate nor any proceedings have been recorded. None of the grounds of objection have been individually dealt with. This omission goes to the very root of the proceeding.

35. The order passed by the First Land Acquisition Collector, Kolkata, dated March 31, 2011 is not in conformity with the provisions of Section 5A(2). The objection of the petitioners with regard to the description, measurement of the plot of the land and availability of the Greek Cemetery as an alternative site for the construction of inlet and outlet of Phoolbagan

metro railway station, had not been considered. The objection of the petitioners that under the garb of acquiring premises No. 43K Narkeldanga Main Road, the respondents were also acquiring premises No. 43A/1A which was an exclusive property of the petitioners was also not addressed. No enquiry on the objections was made. No recommendation on the objections was also made in terms of the statute. The decision of the appropriate government on such objections has also not been disclosed before this court. The respondent no.3 made a general recommendation for publication of the declaration. These factual objections required an enquiry by the First Land Acquisition Collector which had not been done. The merits of the objection should have been considered. The cogent reasons for not accepting the alternative sight should have been recorded as held in ***Daga Auto Services (supra)***.

36. Although, the ultimate decision was to be made by the State Government, it did not relieve the Collector of his statutory duty to enquire into the factual aspects of the objection and make the recommendation. The compliance of the procedure laid down by the statute before depriving a person of his property was necessary, in order to generate the feeling that rule of law prevailed in any state action. The relevant provisions of the law is quoted below:-

“5-A(2)

(1)

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard [in person or by any person authorised by him in this behalf] or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, [either make a report in respect of the land which has been notified under section 4, sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government]. The decision of the [appropriate Government] on the objections shall be final.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.]”

37. It is settled law that the purpose of giving a hearing to the persons whose property was sought to be acquired was that such persons should have a right to try and convince the acquiring authority that alternative site for the public purpose was available and the proposed acquisition would cause undue hardship to them. Right of a citizen who is a land loser to convince the government to leave aside their property and to acquire similarly available unused property which would serve a similar purpose, has been legally recognized. Mr. Galib's contention that only the nature of the 'public purpose' could be decided in the proceeding under Section 5A of the said Act, is not accepted. Such proposition is contrary to the provisions of Section 5A of the said Act. His further contention that the petitioners only had a right to convince the First Land Acquisition Collector that the purpose involved was not public purpose is also not accepted. In this case, the order passed was cryptic. The relevant portion of the order is set out below which would indicate that the proceeding was vitiated due to non-compliance of the provision of Section 5A(2):-

"On 29-03-11 the C.R. is put up after filing of hazira by Sri Arun Kr. Daw and his Ld. Advocate Sri Achintya Kumar Dutta.

Heard the party present. Ld. Advocate made submission that the planning of the project made by K.M.R.C.L. might be inspected by them. They have submitted a letter to the Chief engineer K.M.R.C.L. praying appointment which is shown to me. They have prayed time for another two months for showing the I.O.B. report. They are advised to show the said I.O.B. report in the next stage or hearing u/s 9 & 10 of the L.A. Act 1894 (Act-I of 1894). They also stated that no question of title is disputed now.

No time is allowed. Considering all objections the undersigned opines to take further course of actions u/s 6 of the said Act.

The case is recommended. Let the report be forwarded to the Govt. In L & L.R. department for consideration and further actions."

38. In Usha Stud & Agricultural Farms (P) Ltd. v. State of Haryana reported in (2013) 4 SCC 210, the Hon'ble Apex Court observed as follows:-

“30. The ratio of the aforesaid judgments is that Section 5-A(2), which represents statutory embodiment of the rule of *audi alteram partem*, gives an opportunity to the objector to make an endeavour to convince the Collector that his land is not required for the public purpose specified in the Notification issued under Section 4(1) or that there are other valid reasons for not acquiring the same. That section also makes it obligatory for the Collector to submit report(s) to the appropriate Government containing his recommendations on the objections, together with the record of the proceedings held by him so that the Government may take appropriate decision on the objections. Section 6(1) provides that if the appropriate Government is satisfied, after considering the report, if any, made by the Collector under Section 5-A(2) that particular land is needed for the specified public purpose then a declaration should be made. This necessarily implies that the State Government is required to apply mind to the report of the Collector and take final decision on the objections filed by the landowners and other interested persons. Then and then only, a declaration can be made under Section 6(1).”

39. In the decision of ***Shri Mandir Sita Ramji (supra)***, the Hon’ble Apex Court held that, when objections were filed before the Land Acquisition Collector raising questions of fact, the Land Acquisition Collector should enquire into such objection and then make his recommendations. In the case in hand, the failure of the Land Acquisition Collector to enquire into the objection after giving the objector an opportunity of being heard, would indicate that he declined to exercise his jurisdiction under the law. Moreover, the application of mind by the State Government on the recommendation has also not been produced before this Court. The authorities failed to exercise the jurisdiction vested upon them by law.

40. In my view, non-consideration of the objections filed under Section 5A both by the collector as also the appropriate government has resulted in denial of an effective opportunity of hearing to the petitioners. The manner in which the Land Acquisition Collector, Kolkata recommended the acquisition of the property is reflective of total non- application of mind and non-compliance of the statutory provisions by the competent authority. The recommendation made by the Land Acquisition Collector is couched in general terms and not on the objections of the petitioners. The questions of facts raised by the petitioners were ignored and the recommendation had

not been preceded by an enquiry. The final decision of the government on the objection and recommendation is also not on record.

41. Even if the acquisition is a foregone conclusion, non-observance of the statutory provisions would vitiate the proceedings. The casual observation of the authority that the objections would be relevant at the stage of proceedings under Section 9 and 10 of the said Act, cannot, in my opinion, be a compliance of the provisions of Section 5A of the said Act.

42. In **Surinder Singh Brar (supra)** the Apex Court held as follows:-

“83. In *Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai* [(2005) 7 SCC 627], this Court analysed Section 5-A in the following words: (SCC pp. 637-38, paras 15-16 & 19)

‘15. Section 5-A of the Act is in two parts. Upon receipt of objections, the Collector is required to make such further enquiry as he may think necessary whereupon he must submit a report to the appropriate Government in respect of the land which is the subject-matter of notification under Section 4(1) of the Act. The said report would also contain recommendations on the objections filed by the owner of the land. He is required to forward the records of the proceedings held by him together with the report. On receipt of such a report together with the records of the case, the Government is to render a decision thereupon. It is now well settled in view of a catena of decisions that the declaration made under Section 6 of the Act need not contain any reason....

16. However, considerations of the objections by the owner of the land and the acceptance of the recommendations by the Government, it is trite, must precede a proper application of mind on the part of the Government....

19. Furthermore, the State is required to apply its mind not only on the objections filed by the owner of the land but also on the report which is submitted by the Collector upon making other and further enquiries therefor as also the recommendations made by him in that behalf. The State Government may further inquire into the matter, if any case is made out therefor, for arriving at its own satisfaction that it is necessary to deprive a citizen of his right to property.’

84. What needs to be emphasised is that hearing required to be given under Section 5-A(2) to a person who is sought to be deprived of his land and who has filed objections under Section 5-A(1) must be effective and not an empty formality. The Collector who is enjoined with the task of hearing the objectors has the freedom of making further enquiry as he may think necessary. In either eventuality, he

has to make report in respect of the land notified under Section 4(1) or make different reports in respect of different parcels of such land to the appropriate Government containing his recommendations on the objections and submit the same to the appropriate Government along with the record of proceedings held by him for the latter's decision. The appropriate Government is obliged to consider the report, if any, made under Section 5-A(2) and then record its satisfaction that the particular land is needed for a public purpose. This exercise culminates into making a declaration that the land is needed for a public purpose and the declaration is to be signed by a Secretary to the Government or some other officer duly authorised to certify its orders. The formation of opinion on the issue of need of land for a public purpose and suitability thereof is sine qua non for issue of a declaration under Section 6(1). Any violation of the substantive right of the landowners and/or other interested persons to file objections or denial of opportunity of personal hearing to the objector(s) vitiates the recommendations made by the Collector and the decision taken by the appropriate Government on such recommendations. The recommendations made by the Collector without duly considering the objections filed under Section 5-A(1) and submissions made at the hearing given under Section 5-A(2) or failure of the appropriate Government to take objective decision on such objections in the light of the recommendations made by the Collector will denude the decision of the appropriate Government of statutory finality. To put it differently, the satisfaction recorded by the appropriate Government that the particular land is needed for a public purpose and the declaration made under Section 6(1) will be devoid of legal sanctity if statutorily engrafted procedural safeguards are not adhered to by the authorities concerned or there is violation of the principles of natural justice. The cases before us are illustrative of flagrant violation of the mandate of Sections 5-A(2) and 6(1). Therefore, the second question is answered in the affirmative."

43. In ***Gojer Brothers (supra)***, the Hon'ble Apex Court held as follows:-

"20. If the report prepared by the Land Acquisition Collector is scrutinised in the light of the principles laid down in the aforementioned judgments, we do not find any difficulty in holding that the learned Single Judge and the Division Bench of the High Court committed serious error by approving the acquisition proceedings ignoring that the report was prepared in clear violation of mandate of Section 5A and the State Government mechanically accepted the report leading to the issue of declaration issued under Section 6(1). In the original and supplementary objections filed by it, the appellant had claimed that the entire exercise of acquisition was vitiated due to mala fides and colourable exercise of power. The history of litigation between the parties was also cited by the appellant

to substantiate its plea that the acquisition proceedings were initiated only after the management of the School lost legal battle up to this Court. It was also pleaded that the acquisition was meant to bypass the direction given by this Court to the management of the School to hand over the possession of the School. Unfortunately, the Land Acquisition Collector did not deal with any of the objections and summarily rejected the same as if compliance with section 5A(2) was an empty formality. The State Government also did not apply mind and mechanically approved the one-line recommendation made by the Land Acquisition Collector.

21. In our view, non consideration of the objections filed under section 5A(1) has resulted in denial of effective opportunity of hearing to the appellant. The manner in which the Joint Secretary to the Government approved the recommendation made by the Land Acquisition Collector favouring acquisition of the property is reflective of total non-application of mind by the competent authority to the recommendation made by the Land Acquisition Collector and the report prepared by him.

22. In the result, the appeals are allowed, the impugned order as also the one passed by the learned Single Judge in *Gojer Bros. (P) Ltd. v. State of W.B.* and are set aside.”

44. In ***Daga Auto Service (supra)***, the Hon’ble Apex Court held that the main purpose of making a report under Section 5-A of the Act was to find out whether the proposed purpose was a ‘public purpose’ and whether there was any objection to the acquisition of the land for the said purpose. It was held that an enquiry as to whether there was any alternative land which could be acquired or the purpose of acquisition would be better served by acquisition of any other property, were relevant to the extent that the order and the report had the chance of becoming vulnerable on the ground of arbitrariness, if those aspects were not enquired into.

45. In the decision of ***Women’s Education (supra)***, the Hon’ble Apex Court held that it was unfortunate that despite repeated judicial pronouncements, the executive authorities entrusted with the task of acquiring private land for any specified public purposes had time and again exhibited total lack of seriousness in the performance of their duties under the statute.

46. In *Kedar Nath Yadav (supra)*, the Hon'ble Apex Court held as follows:-

“141. In *Ragbir Singh Sehrawat v. State of Haryana* it was observed thus:

‘39. In this context, it is necessary to remember that the rules of natural justice have been ingrained in the scheme of Section 5-A with a view to ensure that before any person is deprived of his land by way of compulsory acquisition, he must get an opportunity to oppose the decision of the State Government and/or its agencies/instrumentalities to acquire the particular parcel of land. At the hearing, the objector can make an effort to convince the Land Acquisition Collector to make recommendation against the acquisition of his land. He can also point out that the land proposed to be acquired is not suitable for the purpose specified in the notification issued under Section 4(1). Not only this, he can produce evidence to show that another piece of land is available and the same can be utilised for execution of the particular project or scheme.’

142. In *Kamal Trading (P) Ltd. v. State of W.B.* (2012) 2 SCC it was held thus:

‘25. According to the appellant, the notification under Section 4 of the LA Act was not served on the owner companies. However, upon coming to know of this notification, the appellant vide their letter dated 8-9-1997 submitted objections running into four pages containing 8 paragraphs. We have already noted that the Second Land Acquisition Officer adjourned the hearing on one occasion as requested by the appellant. He, however, refused to adjourn the matter any further. The second request was rejected. We feel that looking to the nature of the issues involved, the Second Land Acquisition Officer could have adjourned the proceedings after putting the appellant to terms because hearing the representative of the owner companies was mandatory. In any event, if he did not want to adjourn the proceedings and wanted to consider the objections in the absence of the counsel for the owner companies and assuming such a course is permissible in law, he should have dealt with the objections carefully and not in such a light-hearted manner because a heavy responsibility rested on his shoulders.’

143. In *Surinder Singh Brar v. Union of India* it was observed thus:

‘76. Section 5-A, which embodies the most important dimension of the rules of natural justice, lays down that any person interested in any land notified under Section 4(1) may, within 30 days of publication of the notification, submit objection in writing against the proposed acquisition of land or of any land in the locality to the Collector. The

Collector is required to give the objector an opportunity of being heard either in person or by any person authorised by him or by pleader. After hearing the objector(s) and making such further inquiry, as he may think necessary, the Collector has to make a report in respect of land notified under Section 4(1) with his recommendations on the objections and forward the same to the Government along with the record of the proceedings held by him. The Collector can make different reports in respect of different parcels of land proposed to be acquired.'

'84. What needs to be emphasised is that hearing required to be given under Section 5-A(2) to a person who is sought to be deprived of his land and who has filed objections under Section 5-A(1) must be effective and not an empty formality. The Collector who is enjoined with the task of hearing the objectors has the freedom of making further inquiry as he may think necessary. In either eventuality, he has to make report in respect of the land notified under Section 4(1) or make different reports in respect of different parcels of such land to the appropriate Government containing his recommendations on the objections and submit the same to the appropriate Government along with the record of proceedings held by him for the latter's decision. The appropriate Government is obliged to consider the report, if any, made under Section 5-A(2) and then record its satisfaction that the particular land is needed for a public purpose. This exercise culminates into making a declaration that the land is needed for a public purpose and the declaration is to be signed by a Secretary to the Government or some other officer duly authorised to certify its orders. The formation of opinion on the issue of need of land for a public purpose and suitability thereof is sine qua non for issue of a declaration under Section 6(1). Any violation of the substantive right of the landowners and/or other interested persons to file objections or denial of opportunity of personal hearing to the objector(s) vitiates the recommendations made by the Collector and the decision taken by the appropriate Government on such recommendations. The recommendations made by the Collector without duly considering the objections filed under Section 5-A(1) and submissions made at the hearing given under Section 5-A(2) or failure of the appropriate Government to take objective decision on such objections in the light of the recommendations made by the Collector will denude the decision of the appropriate Government of statutory finality. To put it differently, the satisfaction recorded by the appropriate Government that the particular land is needed for a public purpose and the declaration made under Section 6(1) will be devoid of legal sanctity if statutorily engrafted procedural safeguards are not adhered to by the authorities concerned or there is violation of the principles of natural justice the cases before us are illustrative of flagrant violation of the mandate of Sections 5-A(2) and 6(1). Therefore, the second question is answered in the affirmative'."

Thus the state respondents acted in a casual and cavalier manner while disposing of the objection of the petitioners and even failed to supply a copy of the same to the aggrieved party. The provisions of law has not been complied with. The application of mind of the state government on the objections and the recommendations is absent.

47. The decision of the Hon'ble Apex Court in ***Dharampal Satyapal (supra)*** cited by Mr. Galib, is not relevant in this context.

48. The facts in the decision of the Apex Court in ***Aircraft Employees' (supra)*** are different inasmuch as, in that case the Apex Court held that the objector denied himself of the opportunity of being heard as despite three adjournments at his behest, neither the objector nor his counsel was present on the fourth day when the objection was fixed for hearing and disposed of. This is not a case in which the order itself suffered from non-application of mind.

49. In this case, even if the adjournment was not allowed and the proceedings continued, the First Land Acquisition Collector was duty bound to deal with the objections raised by the petitioners. Before the declaration, the appropriate government also has to arrive at a satisfaction on the materials on record that, the acquisition of the premises concerned was justified in order to achieve the public purpose. No such order of the state government has been disclosed.

50. ***Chandan Singh (supra)***, does not apply to the facts of this case inasmuch as, what fell for decision before the learned Court was whether the Land Acquisition Collector was required to pass a positive order either accepting or rejecting the objections raised under Section 5A of the said Act. The court held that the obligation upon the Collector was to hear the objection, hold an enquiry and thereafter submit a report after making his recommendations on the objections. Although Mr. Galib cited the said decision, I find that the decision rather supports the contention of the

petitioners as the Court held that hearing, enquiry and recommendation on the objections were sine qua non for the purpose of disposal of proceedings under section 5A of the said Act.

51. In *Patel Gandadal Somnath and others vs. State of Gujarat and others* reported in **AIR 1963 Gujarat 50**, it was held as follows:-

“12. The other equally important purpose which the enquiry was intended to serve was to give an opportunity to persons interested in the land to put forward their point of view supported by such material as they liked to show that the land was not needed for a public purpose and that the proposal for acquisition initiated by the Government by issue of the notification under Section 4(1) should not culminate into any definite proceeding for acquisition of the land but should be dropped. It is only fair and just that before persons interested in the land are deprived of their interest in the land they should have an opportunity of showing that the land is not needed for public purpose or for a Company and that notification under Section 6(1) should not be issued for the acquisition of the land. The inquiry under Section 5A affords such an opportunity to persons interested in the land. If there were no provision, for an inquiry and the notification under Section 6(1) could be issued without an inquiry merely on the basis of the subjective satisfaction of the Government, persons interested in the land would not have an opportunity as of right to place before the Government their point of view supported by such materials as they can produce relating to the matter in respect of which the Government has to arrive at a satisfaction and without such point of view being brought to the notice of the Government and such material being placed before the Government, it is possible that the Government might wrongly arrive at the satisfaction that the land is needed for a public purpose or for a Company and issue the notification under Section 6(1) entailing deprivation of the property to the petitioners, which the Government would not have done if all the material facts had come to its knowledge. The Legislature, therefore, provided a safeguard in the shape of an inquiry under Section 5A enabling persons interested in the land to make objections to the acquisition and providing for hearing of such objections at the inquiry so that persons interested in the land can place before the Government their point of view regarding the matter on which the Government has to arrive at a satisfaction together with such material as they like in support of their point of view in order that the Government may be apprised of all the facts and circumstances relating to such matter and the Government may not erroneously arrive at a satisfaction leading to the issue of the notification under Section 6(1) for the acquisition of the land.”

52. **Manimegalai (supra)** and **Saktipada (supra)** are not dealt with as it was no body's case that the purpose for which the lands were acquired was not a 'public purpose'.

53. The decisions of the Apex Court in **Bharat Singh and others vs. State of Haryana and others** reported in **(1988) 4 SCC 534** and **Banku Behari Dutt, vs. State of West Bengal** reported in **AIR 1976 Calcutta 393**, cited by Mr. Galib are distinguishable on facts. The Land Acquisition Collector in the case in hand not only failed to give a proper opportunity to the petitioners to place their objections but also did not proceed in accordance with the statutory provisions by holding an enquiry on the factual objections, before making the recommendation. The grounds of objections were not considered. Moreover, the order dated March 31, 2011 by which the objection was disposed of was not served upon the petitioners and the petitioners came to know of the same as late as in July 2019, when the affidavit-in-opposition was filed by the state respondents. By that time, the acquisition was complete and the said project was also near completion. The respondents have thus acted in violation of the principles of natural justice and also contrary to the provisions of Sections 5A(2) and 6(1) of the said Act.

54. In view of the judicial pronouncements which are discussed above and the facts of this case, I am of the view that the order dated March 31, 2011 is bad in law and was passed in violation of the principles of natural justice. The authorities concerned before making a declaration under Section 6(1) of the said Act were required to take an appropriate decision on the objections. The said order does not reflect any consideration of the objections raised by the petitioners. The order also does not reflect that the petitioners were allowed to argue their case. The adjournment prayed for by the petitioners was refused but there is no material before the court which would show that an enquiry as required under Section 5A of the said Act on the objection made by the petitioners had been made and that the recommendation was made by the First Land Acquisition Collector, Kolkata

to the department concerned, after dealing with all the objections raised by petitioners. At the same time, the appropriate government did not record any final decision on the objections or the recommendation as required by law. At least, no such document has been disclosed before this court.

55. Now the contention with regard to the delay in making the declaration is taken up. With regard to the declaration under Section 6(1) of the said Act, the statute provides that the declaration should be made within one year from the date of the publication of the notification under Section 4(1).

56. Section 6 (1) of the said Act quoted herein below for convenience:-

“6. Declaration that land is required for a public purpose.-

(1) Subject to the provisions of Part VII of this Act, [when the [appropriate Government] is satisfied, after considering the report, if any, made under section 5A, sub-section (2)], that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders [and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under section 4, sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) under section 5A, sub-section (2)]:

[Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1),-

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967), but before the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of three years from the date of the publication of the notification; or

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification:

[Provided further] that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

[Explanation 1.- In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under section 4, sub-section (1), is stayed by an order of a Court shall be excluded.]

[Explanation 2.- Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues.]”

57. To appreciate the question as to the date from which the time of one year to make a declaration under Section 6(1) of the said Act, should be computed, some relevant dates are required to be taken note of. The notification under Section 4(1) of the said Act with the proposal of acquiring the said land for construction of Phoolbagan Metro Station under “East-West Metro Corridor” Project was published in two bengali news papers on March 24, 2010 and then published in the official gazette on April 9, 2010. Public notice of the substance of the notification under Section 4(1) in Form 3D was served upon the petitioner on December 27, 2010 and displayed in the locality on December 28, 2010. December 28, 2010 is the date of publication of the notification according to the said section. The provision of Section 4(1) is clear and unambiguous. In this case, the last date of public notice of the substance of such notification in the locality at a convenient place, should be reckoned as the starting point for computation of the period of one year within which the declaration under Section 6(1) should be made.

58. By a letter dated January 10, 2012 the First Land Acquisition Collector, Kolkata intimated the Joint Secretary to the Government of West-Bengal, Land & Land Reforms Department, that the authentication of the declaration had lapsed and no publication of the same could be done. The letter is annexed to the affidavit-in-opposition filed by KMRCL.

59. Relevant paragraph of the letter dated January 10, 2012 is quoted herein below for convenience:

“It reveals that in the instant L.A. Case the publication of Declaration u/s. 6 will have to be made in all respect i.e. in the E.O. issue of the Kolkata Gazette, News Papers and on the Spot within 27.12.2011 but the Declaration u/s. 6 of the L.A. Act-I of 1894 being No. JS-1827/L.A. dt.28.12.2011 has been authenticated on 28.12.2011 and as such the said Declaration now appears to have been lapsed.

Under such circumstance, it is not understandable how such declaration will be published in the above mentioned of L.A. Proceedings within 27.12.2011.”

60. In the order dated March 31, 2010 the First land Acquisition Collector has stated as follows:-

“The substance of Notification u/s 4 of the L.A. Act-I of 1894 in form 3D has been displayed on the spot at conspicuous place near the land proposed to be acquired vide this office Notice No.235 dt. 27-12-2010 and also served upon the interested persons inviting objections if any, to the acquisition thereof 30 days from the date public notice of the substance of the Notification was displayed on 28-12-10 in the locality.”

61. Thus, accepting the contention of the state respondents in their affidavits-in-opposition that the declaration was authenticated within the period of one year, that is, on December 28, 2011 as the date of communication of the substance of notification to the Kolkata Municipal Corporation, that is, December 29, 2010, would be the last date of publication of the notification under Section 4(1) of the said Act, would amount to rewriting the statute. It is a well settled principle of law that nothing could be read into a statutory provision which was plain and unambiguous. A statute was an edict of the legislature. The language employed in a statute was the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. Thus there is no scope of reading something else into the provision of Section 4(1) of the said Act with regard to the last date of the notifications and computation of one year from that date. In **Krishi Utpadan Mandi Samiti (supra)**, and **Eugenio Misquita (supra)**, the last date in the series of publications made under Section 4(1) of the said Act was held to be the relevant date to reckon the starting point of limitation for the purpose of Section 6(1)(ii). The communications to local authorities, police etc. do not form a part of the publication under Section under 4 (1) of the Act.

62. Reference is made to paragraph 13 of the decision of the Five Judge's Bench of the Hon'ble Apex court in ***Padmasundara Rao (Dead) (supra)***, which is quoted below:-

"11. The rival pleas regarding rewriting of statute and casus omissus need careful consideration. It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the Legislature itself. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed not as theorems of Euclid". Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them." (See *Lenigh Valley Coal Co. v. Yensavage*, 218 FR 547). The view was reiterated in *Union of India and others v. Filip Tiago De Gama of Vedem Vasco De Gama* (AIR 1990 SC 981)."

63. It has been held by the Hon'ble Apex Court in ***Ashok Kumar (supra)***, that the proviso appended to sub-section (1) of Section 6(1) was in negative terms. It was therefore mandatory in nature and any declaration made after the expiry of one year from the date of publication of the notification under Section 4(1) of the said Act would be void and of no effect. Thus the decision in ***Durga Pada Mukherjee (supra)*** does not apply.

64. The decision of Hon'ble Apex Court cited by Mr. Galib in ***Ganesh Jha (supra)*** does not help the respondents, inasmuch as, the decision was given only on the point whether the acquisition was mala fide or not and the questions of non compliance of statutory provisions were not the subject matter of challenge.

65. Moreover it is also seen that not only the Kolkata Municipal Corporation but also the Officer in Charge of the local police station and other authorities were served with a copy of the notification subsequent to the publication in the locality. Service of copies of such notifications upon the local authorities cannot be treated as the publication and or public notice as envisaged under Section 4(1) of the said Act. The last date of publication of the substance of the notification in the locality will be the date

of the publication of the notification. Thus, December 28, 2010, is the date from which the period of one year from making the declaration should be computed. The period of one year ended on December 27, 2011.

66. It has been held by the Hon'ble Apex Court in ***Sriniwas Ramnath Khatod v. State of Maharashtra and ors.*** reported in ***(2002) 1 SCC 689***, that the relevant date for declaration would be the date on which the same was made in the file and not when published. The earlier decisions of the Hon'ble Apex Court rendered in ***Eugenio (supra)*** and ***Krishi Utpadan (supra)***, with regard to the date of declaration was overruled. In this case the last publication of the substance of notification under Section 4(1) of the said Act in the locality was on December 28, 2010. The declaration under Section 6(1) of the said Act was authenticated in the file of the state respondents on December 28, 2011. Even if this date is to be taken into consideration, then the declaration had been made one day after the period of one year from the last date of publication of the substance of the notification under Section 4(1) of the said Act had expired. The declaration has not been made according to the statutory requirement. It is not a ministerial irregularity but violation of a mandatory provision of the statute.

67. Mr. Galib cited the decision of Hon'ble Apex Court, in ***Executive Engineer, Jal Nigam (supra)***, which does not appear to be relevant in this context as in that case, the decision pre-supposed a valid acquisition.

68. Now, the contentions of the respondents that the petitioners had waived their right to challenge the acquisition proceeding is taken up. In the decision of ***P.Dasa Muni (supra)***, the Hon'ble Apex Court held that, 'Waiver' sometimes was in the nature of an 'election'. It had to be consensual in nature. It implied meeting of the minds. This court has to assess as a rule of judicial policy whether from the facts of the case and the documents which are part of the records, the petitioners were taking inconsistent stands or not. The court does not find that the petitioners had consciously chosen to give up or relinquish their challenges to the acquisition proceedings as contained in this writ petition. The writ petition had been pending before

this court and could not be disposed of within a specific time. In the interregnum, acquisition had been completed and the award had been declared. Proceedings were initiated under Section 18 of the said Act by the petitioners but without prejudice to their rights and contentions in the writ petition, as would be evident from the applications filed before the learned L.A. Judge itself. Their prayer before the learned L.A. Judge for investment of the award in an interest bearing fixed deposit in a nationalized bank was also without prejudice to their rights and contentions in the writ petition and the learned L.A. Judge allowed the same without prejudice and subject to the decision in the writ petition.

69. The decision of Hon'ble Apex Court in ***Provash Chandra (supra)*** cited by Mr. Galib on the point of waiver is not accepted as in the instant case, there was no voluntary and intentional relinquishment of a known right.

70. In the decision of ***Superintendent (Tech. I) (supra)***, the Hon'ble Apex Court held that an action of a party without prejudice would mean that no rights or privileges of the said party concerned were to be considered as thereby waived or lost. The correct understanding of an action of a party, "without prejudice", would mean that the said party had not given up any claim or any challenge before any court of law by performing certain acts 'without prejudice'.

71. In the decision of ***Vyalikaval House Building Co-op, Socetty (supra)***, the Hon'ble Apex Court held that if acquisition had been found to be totally mala fide or in violation of any statute, any settlement between the parties on the basis of the tainted notification was of no consequence and could not validate the illegal notification. When the notification on the basis of which the land was sought to be acquired stood vitiated, then whatever money the authorities had paid, was at their own risk, and nothing turned on the question of delay and acquiescence. No benefit could be derived from such notification, inasmuch as, once the acquisition was found to be illegal nothing further remained. The respondents published the award at their

own risk. The proceedings stand vitiated for non-compliance of the statutory provisions.

72. In *Chandrakant Adinath Utture vs. State of Maharashtra and others* reported in **(2016) 6 SCC 150**, the Hon'ble Apex Court held that passing of the award by itself did not mean that any illegality in the proceeding could not be addressed. Thus, the question of waiver does not arise at all.

73. The acquisition, insofar as, it relates to the lands of the petitioners covered by the impugned notice under Section 4(1) is illegal and liable to be set aside. The next question is how the petitioners can be compensated for having been deprived of their property on the basis of an illegal acquisition. In view of the fact that the public purpose in this case is of national importance, namely, construction of the inlet and outlet of Phoolbagan metro railway station as an integral part of the "East-West Metro Corridor Project" and the project has been completed, this court does not consider it justifiable to set aside the acquisition proceeding although, the same has been found to be bad in law due to statutory non-compliances. However, in granting relief at the end of a protracted litigation, as in the present case, the Court cannot be unmindful of facts and events that may have occurred during the pendency of the litigation. It may at times become necessary to balance the equities having regard to the fact situation and accordingly mould the relief(s). How the relief is to be moulded in the light of all the relevant facts, essentially lies in the realm of the discretion of the courts whose ultimate duty is to uphold and further the mandate of law.

74. In the decision of Hon'ble Apex Court in *Gauri Shankar Gaur and Others vs. State of U.P. and Others* reported in **(1994) 1 SCC 92**, the Apex Court having found the proceedings to be invalid, shifted the date of the notification to the date when the belated declaration was made. As the project had been completed, the Apex Court directed that the compensation be calculated on the market value of the land which has considerably

increased after three years. The Hon'ble Apex Court was of the view that an enhanced amount should be paid to the land loser.

75. In the decision of *Ujjain Vikas Pradhikaran vs. Raj Kumar Johri and Others along with other matters* reported in **(1992) 1 SCC 328**, the date was shifted to a period of 3 years beyond the original date of notification as in view of the Hon'ble Apex court, substantial improvement to the land had been made and the land owners were to be compensated by an enhanced amount.

76. In the decisions of Hon'ble Apex Court in *Haji Saeed Khan and Others vs. State of U.P. and Others* reported in **(2001) 9 SCC 513** and in *Competent Authority vs. Barangore Jute Factory and Others* reported in **(2005) 13 SCC 477**, it was held that the date of notification under Section 4(1) should be shifted to the date when possession of the land was taken by the authorities.

77. Thus, when the public purpose sought to be achieved had been implemented and larger public and social interest were involved, the Apex Court held that the equities were to be adjusted and instead of setting aside the entire acquisition proceedings, the land owners should be adequately compensated by shifting the date of notification to a future date as applicable in each case, on the facts. Such shifting would fetch enhanced compensation calculated on the basis of the market value of the land on the date to which the notification was shifted. Such amount was usually higher as the market value of such land had naturally increased due to passage of time.

78. The decisions of the Hon'ble Apex Court cited by Mr. Bera, namely, *Soorajmull Nagarmull vs. State of Bihar and Others* reported in **(2015) 10 SCC 270** and *State of Uttar Pradesh and Others vs. Abdul Ali and Others* reported in **(2017) 3 SCC 108** are not applicable to the facts of this case. In *Abdul Ali and others (supra)*, no facts were discussed by the Hon'ble Apex Court, as to whether possession of the land had been taken

and whether the project had been completed or not. In **Soorajmull (supra)** the State was already proposing to initiate a fresh acquisition proceeding as the earlier proceeding had lapsed and thus the Hon'ble Apex Court directed that fresh proceedings should be initiated within a particular time frame. The decision of the Apex Court in **K.B. Ramachandra Raje (supra)** does not squarely apply in the facts of this case, insofar as, shifting the date of the notification to the date of the order of the learned Single Judge is concerned. The developmental work had not been done. Large part of the land had been encroached and some parts were vacant. Here, the construction of the inlet and outlet of the Phoolbagan Metro Railway Station was completed long time ago and the purpose of the acquisition was of much greater public interest. The entire acquisition and the construction was completed during the pendency of the writ petition. The equities must be balanced and hardship of both the parties should be minimized.

79. In situations similar to the facts of this case, where the acquisition proceedings were found to be illegal on account of statutory non-compliances but the project, that is, the public purpose for which the acquisitions had been done was complete, the Hon'ble Apex Court shifted the date of the notification under Section 4(1) of the said Act to a future date, and directed payment of enhanced compensation at the market price prevailing on such future date. This was done in order to avoid further complications and problems that would be created in case the proceedings were set aside. Therefore, weighing the individual interest of the land owners with the public interest of large number of persons who would be benefited from such a project, an equitable approach was always adopted by the Hon'ble Apex Court. Larger social interest, therefore, required the court to mould the relief in such a manner that would be just and proper. This case also fits into such a situation.

80. On 1st January 2014, the Act of 2013 came into force. The Land Acquisition Act, 1894 had been repealed. The acquisition of premises concerned in this case had been initiated under a law which has since been

repealed and has lost its force. Therefore, in this case, the equities can be adjusted by directing that the compensation to the land owners be paid as per the Act of 2013, assuming that the notification under Section 4(1) was made on the date the “Act of 2013” had come into force i.e. January 1, 2014.

81. In cases where an award pursuant to an acquisition proceeding initiated under the said Act of 1894 had not been made, the proceedings could still continue under the Act of 2013. Thus in my opinion, equity would be balanced if the date of the notification under Section 4(1) of the said Act is shifted to the date of coming into force of the Act of 2013 i.e. January 1, 2014. The date of taking possession in this case, would not be relevant as the possession was also taken on 17th April 2013 when the repealed Act was in force. Once the said Act had been repealed, all further proceedings have to be followed under the Act of 2013 and as such the date of notification is shifted to January 1, 2014 and the respondents are directed to pay the compensation to the petitioners, in terms of the Act of 2013 by calculating the market value of the property as on January 1, 2014. The claim of interest and solatium on the amount of compensation so awarded is to be decided in accordance with the prevailing law that is, the Act of 2013. The entire exercise should be completed within four months from date of communication of this order.

82. The awarded amount already deposited before the Learned L.A. Judge by way of compensation and now invested in an interest bearing fixed deposit together with the interest accrued, shall be adjusted. I express no opinion about other statutory rights, if any, available to the parties in this behalf and the parties will be free to exercise the same, in accordance with law.

83. The writ petition and the connected application are disposed of. There shall be no order as to costs.

Urgent photostat certified copy of this judgment, if applied for, be given to the parties, on priority basis.

(Shampa Sarkar, J.)