

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:- Hon'ble Mr. Justice I. P. Mukerji
And
Hon'ble Mr. Justice Aniruddha Roy

MAT No. 925 of 2009

Smt. Swapna Atta & Ors.
vs.
State of West Bengal & Ors.

For the appellants : **Mr. Hirak Kumar Mitra, Sr. Adv,**
Mr. Sandwip Kumar Mukhrejee,
Mr. Debdutta Sen,
Ms. Suchismita Chatterjee,
Mr. Malay Kumar Seal.

For the State : **Mr. Ayan Banerjee, Adv.**

For the H.I.T : **Mr. Sujit Chowdhury, Adv,**
Mr. Sibojyoti Chakravarti.

Reserved on : **29.04.2022**

Judgment on : **12.05.2022**

ANIRUDDHA ROY, J.:

1. An intra-court mandamus appeal was filed assailing the impugned judgment and order dated August 20, 2009 (for short, the impugned order) passed in WP No. 31978 (w) of 2008 (for short, the writ petition), whereunder the writ petition was dismissed and the acquisition of land was upheld.

Facts

From the writ petition:

2. The land in question in the District of Howrah was measuring about 145 cottahs being R.S. Plot No. 449; H.S. Khatian No. 256 equivalent to an area of about 1.00 acre classified as Karkhana, Mouja: Malipanchghara J.L. No.1 with the Howrah Municipal Premises No.171, G.T. Road (North), Police Station, Malipanchghara, Howrah-711106 (for short, the said land). The total value of the land claimed to be few crores of rupees.
3. The appellants being the writ petitioners from their predecessors-in-interest were the absolute owners of the said land.

4. At all material time the predecessors-in-interest of the appellant had setup an iron foundry under the name and style of **M/s. Atta's Iron Foundry** at the said land and the appellants with the passage of time had carried out the said iron foundry business which was an age old and renowned, existed for about 100 years in the foundry business. It was carried out as a partnership concern of the appellants. The said land in the revenue records was classified as **"Karkhana"**. The said foundry with all its required infrastructural facilities was in existence at the said land.
5. Till the year 1990 the said foundry was in a running condition with about 59 nos. of workers as a productive cast iron foundry unit.
6. Pursuant to and in terms of the order passed by the Hon'ble Supreme Court on August 06, 1996 in WP (Civil) No. 3727 of 1985 with the intervention of the State Authority the said foundry was closed down to ensure that necessary pollution control devices could be installed to run the said foundry further. The closure of the said foundry was also duly notified to the local police authority by letter dated February 14, 1996. For installation of the necessary pollution control devices and to make the foundry modernized after compliance of all the statutory requirements, a substantial fund was required, which could not be arranged by the said Atta family due to severe financial crisis being faced by them at the relevant point of time. In or about 2006 the necessary fund was arranged and the required modernization work including installation of the pollution control devices had commenced at the said foundry.
7. By a communication dated February 05, 2008 the appellants were informed from the office of the Sub- Divisional Land & Land Reforms Officer that since the factory remained closed for a long years, a survey was required to be conducted by the State authority on February 12, 2008 at about 1:00 PM and accordingly the appellants being owners of the land were requested to be present at the said foundry. This was the first communication received by the appellants. The purpose of survey was also not disclosed in the communication nor such purpose was ever communicated to the appellants.

8. Pursuant to and in terms of the said notice dated February 05, 2008 the necessary survey was conducted by the State authority on February 12, 2008 and the father of the present appellant no.1 Sri. Santilal Atta, since deceased (**first writ petitioner**) was present. The concerned official of the State while carrying out the said survey informed that this was nothing but a routine survey in respect of a closed factory.
9. By a letter dated March 07, 2008 the writ petitioners replied to the said memo dated February 05, 2008 requesting the State authority not to proceed any further in the matter and to close the issue.
10. By another letter dated March 10, 2008 the Sub-Divisional Land & Land Reforms Officer informed that a hearing would be held on March 13, 2008 regarding the utilization of the said land and the writ petitioners were requested to be present on March 13, 2018 at 1:00 PM.
11. On March 13, 2008 the first writ petitioner duly attended the hearing before the said Sub-Divisional Land & Land Reforms Officer, when he was assured that in view of the letter of the writ petitioners dated March 07, 2008 the State Government would not proceed any further in the matter and the issue would be closed. The writ petitioners had relied upon such assurance of the State Authority and took all the steps to implement the direction of the Hon'ble Supreme Court for reopening the said foundry with all modernized and pollution control devices and had incurred several lakhs of rupees for such purpose.
12. The writ petitioners then received information from the local shopkeepers who were to be evicted due to the proposed construction of one **flyover at the crossing at Salkia Chowrasta, G.T. Road (North), Howrah** (for short, **the said flyover**) that the process for acquisition of the said land had substantially progressed for rehabilitation of the evicted shopkeepers/traders/businessmen by constructing a market complex on the land. The writ petitioners had further learnt that necessary statutory notifications were also published in the gazette. However, the writ petitioners all along were in dark and without any notice whatsoever.

13. By a letter dated December 11, 2008 a representation was made on behalf of the writ petitioners before the second and sixth respondents requesting to furnish all details and necessary informations regarding acquisition of the said land. The writ petitioners did not receive any reply thereto.
14. The writ petitioners then realised that, the survey allegedly held on February 12, 2008 pursuant to the notice dated February 05, 2008 was for the purpose of the acquisition of the said land and the same was not disclosed to the petitioners.
15. The writ petitioners contended that, no notice relating to acquisition was ever served upon the writ petitioners. The purpose for acquisition of the land was not disclosed to the owners of the land. The provisions of law were also not made known to the writ petitioners under which the State had sought to acquire the land. The Act and conduct of the State authority was grossly arbitrary, illegal and wrongful. The said land was sought to be taken out of the writ petitioners, who were the owners of the land, without due process of law. Hence, the writ petition was filed, inter alia, praying for withdrawal and/or quashing of the acquisition proceeding in respect of the said land and other consequential reliefs.
16. Two supplementary affidavits were filed on behalf of the writ petitioners. In the first supplementary affidavit affirmed on January 07, 2009, the writ petitioners contended that the writ petition was filed on December 16, 2008 and the notice was served upon the State authority. After receiving the said notice of the writ petition the State authority in paper took possession but no physical possession was taken of the said land. By a letter dated January 03, 2009 the fifth respondent informed the tenant of the petitioners, namely, the Indian Bank that the said land was acquired for construction of the said flyover and the same was handed over to the fifth respondent on January 03, 2009. The tenant bank was asked to apply for temporary license from the fifth respondent for running its office till an alternative space was allocated to the bank. It was then contended that, the said land was acquired without due process of law and without calculating the valuation of the property and

without granting any opportunity of hearing to the petitioners for fixing the compensation in respect of the said land. It was also contended that the said land was not at all required for construction of the said flyover and was acquired for a shopping complex for commercial purpose under the guise of construction of a flyover. There was no scope for construction of the flyover or any part of it on the said land. Though the land was acquired allegedly for the flyover but the State authority granted license to various persons for commercial purpose and earning from the said land. It is also settled that, if a property is acquired for a particular public purpose and the same is used for any other purpose, the acquisition is bad. No award for compensation could be made without giving notice to the petitioners land owners. The award was also made without taking into consideration the proper market value of the land. Thus, the acquisition was bad. The second supplementary affidavit was affirmed on February 23, 2009. The petitioners disclosed that being aggrieved by the quantum of compensation they had filed proceeding under Section 18 of the Land Acquisition Act, 1894 (for short, the said act) without prejudice to their rights in the said writ petition. It was contended that, the land was situated far away from proposed site where the said flyover was proposed to be constructed and as such there was no manner of requirement of the said land for construction for construction of the said flyover. It was contended that no notice under Section 4 of the State Act was served upon petitioner and as such the petitioners could not raise their objections as per the law. The declaration made under Section 6 of the Act was also without following the due process of law and without granting opportunity to the petitioners to raise their objections under Section 5A of the Act and the declaration under Section 5A of the Act and the declaration under Section 6 were in violation of the relevant law and were not tenable. Apart from this, the rest of the contentions in the said second supplementary affidavit were identical with that of the first one.

From the affidavit-in-opposition filed by the State:-

17. The State contended that the names of the writ petitioners and/or their predecessors-in-interest were shown to be the owners of the said land as would appear from the title record and the revenue record of the State authority. The State contended that the foundry business was stopped long back and there was no running business at the relevant point of time when the land was ultimately acquired and vested with the State. The land was lying vacant for a substantial period of time. The said land was acquired for the purpose of and related to the construction of the said flyover. To proceed with the acquisition the necessary notification under Section 4 of the said Act was duly made with strict compliance thereof in the following manner:-

(a) Notification in the Times of India was published on July 19, 2007;

(b) Notification in the Ganashakti was published on July 15, 2007;

(c) Notification in the Calcutta Gazette was published on July 10, 2007
and;

(d) The Collector had caused public notice of the substance of such notification at convenient places in the said locality on November 29, 2007.

18. The relevant documents in support of such contention were annexed to the affidavit-in-opposition at pages 109 to 113 (Cyclostyle nos.) of the paper-book.

19. The State contended that pursuant to and in terms of the said Section 4 notification the parties who were interested on the said land filed their respective objections which were duly disposed of by the concerned authority by its orders passed from time to time. The copies of the relevant records in this regard were also annexed to the said affidavit-in-opposition and were available at pages 114 to 132 (Cyclostyle nos.) of the paper-book. The State contended that unless appropriate notification was made in strict compliance of Section 4 of the Act, all such objections could not have been raised by the interested persons under Section 5 of the said Act and these were duly disposed of in accordance with law. The writ petitioners despite

due notice failed and neglected to raise such objections before the appropriate authority opposing the acquisition process at any point of time.

20. The necessary declarations under Section 6 and 7 of the said act were made and published by the State authority in the following manner:-

- (a) Published in Times of India On June 13, 2008;
- (b) Ganashakti June 13, 2008;
- (c) Calcutta Gazette on June 16, 2008 and;
- (d) At the locality on July 25, 2008.

21. The provisions under Section 8 were duly complied with. Notices were issued under Section 9 of the said Act and the petitioners refused to receive such notices. All these documents were annexed to the said affidavit-in-opposition at pages 122 to 131 (Cyclostyle no.) of the paper-book. The relevant refusal to accept notices on behalf of the petitioners were also apparent from the document at page 127 (Cyclostyle no.) of the paper-book.

22. The fifth and sixth respondents filed their affidavit-in-opposition to the supplementary affidavit filed by the writ petitioners which was affirmed on May 05, 2008. A supplementary affidavit was also affirmed on June 19, 2009 on behalf of the fifth and sixth respondents. The writ petitioners filed its affidavit in reply to the said affidavit-in-opposition and the supplementary affidavit filed by the respondent nos. 5 and 6. The writ petitioners also affirmed an affidavit in reply to the affidavit-in-opposition of the supplementary affidavit filed by the respondent nos. 5 and 6. In this reply the writ petitioner contended that, the factory was not closed for a long time. A proceeding was initiated by the relevant State authority under Section 6(3) of the West Bengal Estate Acquisition Act, 1953 (for short, the Estate Acquisition Act). Such proceeding was disposed of after conducting an enquiry that the existence of the factory was there but due to the prohibition imposed by the Pollution Control Board, the foundry was closed.

23. The writ petitioners chose not to file any affidavit in reply to the affidavit-in-opposition filed by the State.

24. Both the writ petitioners and the State through their respective counsels had filed their written notes in the matter.

Submissions:-

25. Mr. Hirak Kumar Mitra, Leaned Senior Counsel on behalf of the writ petitioners/appellants raised and argued two principle issues before this Court:-

(a) Non-compliance with the third limb of Section 4(1) of the Act, namely, the Collector had not caused public notice of the substance of the notifications by giving at convenient places in the locality. This being a mandatory provision, the non-compliance thereof vitiated the entire acquisition process and;

(b) The Learned Judge while passing the impugned order had erred in presuming that the representation made on December 11, 2008 was signed on March 07, 2008. The Learned Judge failed to appreciate that the said letter dated March 07, 2008 **(at page 82 of the paper-book)** was in response to the notice under the Estate Acquisition Act dated February 05, 2008 **(at page 74 of the paper-book)**, while the other dated December 11, 2008 **(at page 75 of the paper book)** was in response to the reconnaissance notice under Section 6(3) of the Estate Acquisition Act dated August 05, 2008 **(at page 107 of the paper-book)**. The Learned Judge had come to his conclusion on the basis of the documents relating to the West Bengal Estate Acquisition Act and not on the basis of the Land Acquisition Act.

26. Learned Senior Counsel for the writ petitioner then submitted that, the purpose for acquisition of the said land was never notified to the petitioners. The petitioners were never granted with any opportunity of hearing as required at the relevant stages of the Land Acquisition Act. He did not dispute and on the contrary admitted that, the relevant notification for acquisition of the land was duly published in the official gazette and the two daily newspapers circulating in the locality and one of such newspaper was of regional language, namely, Bengali. It was submitted that, the next limb of

publication to which the Collector is duty bound to cause public notice of the substance of such notification to be given at convenient places in the locality was never complied with. This is a mandatory statutory provision. This provision was embodied in the statute to make people at the locality at large to be informed as to the acquisition of the land. He submitted that, it is not only the interested party in the land but also the common people of the locality must have the notice of acquisition.

27. The learned senior counsel placed his thrust and reliance on the expression **“at convenient places in the locality”**. He submitted that, all the known places at the locality may not be a convenient place. It was, therefore, required to cause the said notice to be placed, as widely as possible, at the convenient places at the locality. The non-compliance of the said mandatory statutory provision as laid down under Section 4(1) of the said Act rendered the acquisition process illegal and invalid. In support, he relied upon the following decisions:-

- (i) *In the matter of: Smt. Hira Girdhardas Mansata & Ors. vs. State of West Bengal & Ors., reported at (2000) 1 Cal LT 407;*
- (ii) *In the matter of: 1.Narinderjit Singh; 2. Ranjit Singh & Ors. vs. The State of U.P. & Ors., reported at AIR 1978 Supreme Court 552 and;*
- (iii) *In the matter of: Rajmal and etc. etc. vs. State of Rajasthan & Ors., reported at 1997 SCC OnLine Raj 12 : AIR 1997 Raj 68.*

28. Mr. Mitra, learned senior counsel for the appellants submitted that, the land losers writ petitioners who were the appellants herein were aggrieved with the quantum of compensation assessed by the State authority as payable to them. While assessing the said compensation the market value was never considered. The relevant law was also not followed. Hence, aggrieved by the said decision for quantification for compensation, the appellants had also initiated a proceeding for enhancement of compensation under Section 18 of the Land Acquisition Act. This is pending. This proceeding was filed without prejudice to the rights and contentions in the writ petition.

29. The learned senior counsel for the writ petitioners then submitted that, while dealing with the issue in the writ petition, the learned judge had completely mixed up the same with the proceeding initiated by the State authority under West Bengal Estate Acquisition Act and came to a wrong conclusion by dismissing the writ petition. He drew attention of this Court to the various portions of the impugned order in support of his case.
30. The learned senior counsel then submitted that, the entire acquisition process must fail as the same was done without complying the mandatory provisions of law. The impugned order must be set aside and the writ petition should be allowed.
31. Mr. Ayan Banerjee, Learned Counsel appearing for the State had placed the pleadings filed before the Writ Court extensively. He drew attention of this Court to the documents appended to the affidavit filed by the State and demonstrated before this Court as to the specific compliance of each and every statutory provisions while causing the notifications under Section 4(1) of the Land Acquisition Act. In course of the hearing he relied upon and placed before this Court the original **Form-3D** from records. The original form was also shown to the learned counsel for the appellants and to this court as well. Photocopies of the said original Form-3D was also made available to this Court and also to the Leaned Senior Counsel for the appellants. This was so done because at page 113 (Cyclostyle no.) of the paper-book the bottom portion of the said form was not available. Relying upon the said document he submitted that, the documents specified the relevant notice under Section 4(1) of the Act was forwarded to the local Government Offices and Panchayat Bodies in the locality for wide publicity and for displaying the notice at the Office Notice Boards and a copy of the notice was directed to be displayed at a conspicuous place near the land proposed to be acquired. Mr. Banerjee, then submitted that, the Collector had duly caused the public notice of the substance of the notification to have given at convenient places at the locality and such act was done. It was submitted that, pursuant to the substance published at the convenient

places at the locality various people other than the owners who felt to be interested on the land raised their objections before the local statutory authority and each of such objections were duly disposed of by following the statutory prescriptions. In this regard, he drew attention of this Court to the orders passed from time to time by the Collector in the acquisition process which were appended to the said affidavit filed by the State. He also drew attention of this Court to the substance of declaration made under Section 6 of the Land Acquisition Act which was also appended to the said affidavit filed by the State. It was also demonstrated before this Court that the process server duly went to serve notice to the writ petitioners and after being explained with the content of the notice, the writ petitioners refused to accept the same. The Learned State Counsel also drew attention of this court to the notice dated January 01, 2009 for taking possession of the said land for the purpose of construction of the flyover.

32. The Learned State Counsel then submitted that, the said land was duly acquired in strict compliance of the statutory provisions. All the modes of service of notice for acquisition of land were duly complied in terms of Section 4(1) of the Land Acquisition Act. The appellants and each of them were either by themselves or through their predecessors-in-interest had due notice and knowledge of the said acquisition process. Despite notice the appellants/writ petitioners did not raise any objection under Section 5 of the Land Acquisition Act and allowed the proceeding to be carried out. The possession of the land had already been taken over by the State. The land had been vested with the State. Compensation had already been determined in favour of the appellants/writ petitioners. The appellants had filed proceeding for enhancement of compensation under Section 18 of the Land Acquisition Act. There was no infirmity in the acquisition process. The land was required and acquired for the public purpose for construction of the flyover. In such circumstance the question of withdrawing or cancelling the land acquisition process or the question of any reversion of the land did not and could not arise. In support Mr. Banerjee relied upon a decision of the

Hon'ble Supreme Court *In the matter of: Mahadeo (Dead) through LRS. & Ors. vs. State of Uttar Pradesh & Ors., reported at (2013) 4 Supreme Court Cases 524.*

Decision:-

33. To address the issues raised in the appeal some relevant admitted facts are required to be reiterated. The first two limbs of publication specified under Section 4(1) of the said Act were not disputed by the appellants. The possession of the land had duly been taken over by the acquiring authority. The appellants, despite notice, chose not to file any objection under Section 5 of the said Act. The local people had raised their objections which were disposed of in accordance with law by the Collector. The appellants and/or predecessors-in-interest refused to accept necessary notices relating to the acquisition of land which were attempted to be served upon them as the owners of land. Provisions under Section 6 and 8 of the said Act were duly complied with. Compensation payable to the appellants had duly been determined. Possession of the land taken. The appellants were aggrieved by such determination of compensation and filed proceeding for enhancement under Section 18 of the said Act, the same is pending. The land had been vested with the State free from all encumbrances. All these facts are clear from and available on records.
34. It is also pertinent to note that on a careful scrutiny of the averments made and the grounds stated in the writ petition and the grounds of appeal, it appeared to this Court that the case of non-compliance of the provision under Section 4(1) of the said Act ***that the Collector did not cause public notice of the substance of the Section 4 notification to be given at convenient places in the locality*** was never made out. It was argued before this Court from the bar, as a point of law for the first time in the appeal. The writ petition merely contained a general averment that the provisions under Section 4 of the said Act were not complied with and as such the entire acquisition process was bad in law. However, since the issue goes at the root of the matter this Court is of the view that the same needs to

be addressed.

35. Section 4 of the Land Acquisition Act is set out herein below:

“4. Publication of Preliminary Notification and Powers of Officers thereupon. (1) Whenever it appears to the [appropriate Government] that land in any locality [it 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 application and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification)].

(2) Thereupon it shall be lawful for any officer, either generally or specially authorized by such Government in this behalf and for his servants and workmen,-

to enter upon and survey and take levels of any land in such locality;
to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches; and

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so”.

36. From the averment made in the affidavit filed by the State it appeared that such third limb of the notification i.e. giving of public notice was effected in the locality on November 29, 2007 which was subsequent to the gazette notification and the newspaper publications. It also appeared that necessary declaration under Section 6 and 7 of the said Act were also published in the locality subsequent to the gazette notification and newspaper notifications. From the document at pages 112 and 113 (Cyclostyle No.) of the paper-book, the original Form-3D (Copy was kept on record) was produced before the Court, it appeared that statutory and other local authorities were served with the substance of notification to cause the same to be displayed in the office. Direction was issued to display the notice at a conspicuous place near the land proposed to be acquired. Inasmuch as, such contentions of the State was not rebutted by the writ petitioners on record. The documents referred to above were also not disputed or denied by the writ petitioners.

37. As argued by the Learned Senior Counsel on behalf of the appellants that,

the said third limb of publication provided giving of public notice at the locale as widely as possible, to enable the local people interested on the land to raise their objections in the acquisition process, if any. In this regard, it would further be evident from record that various other people of the locality who were allegedly interested on the land had raised their objections under Section 5A which were duly disposed of by the relevant statutory authority. These objectors were not the owners of the land. Such facts prove the presumption under Section 114 of the Evidence Act, in favour of compliance of the third limb of Section 4(1) of the said Act.

38. Several judgments were mentioned in the written notes filed on behalf of the appellants in support of diverse propositions. However, save and except those which were already mentioned herein above, none were relied upon in course of the argument.

39. *In the matter of: Smt. Hira Girdhardas Mansata & Ors. (supra)* the plot of land was situated at Middleton Street, Calcutta and the relevant notification to be published at the locale was caused to have been made at the relevant police station being Park Street Police Station, within whose jurisdiction the property was situated but it was not found from the record that the notification was hung up on the notice board of the concerned police station. On this ground the notification 4(1) of the Act with all consequential proceeding was quashed. The ratio in the above judgment delivered by a coordinate bench of this Court is clearly distinguishable on facts in the instant case. The law is well settled that, once pursuant to an acquisition process the land is vested with the State and necessary compensation was determined after following the due process of law, as is evident from the records of this case, such acquired land cannot be divested. The said judgment of the coordinate bench of this court does not show as to the reasonable conclusion of the land acquisition process and that the land was vested with the state. Inasmuch as in the facts of the said judgment no notice was published at the locale in compliance of the said third limb of Section 4(1) of the Act as held by the Coordinate Bench. In the instant case

such notice was there. Hence, the ratio of the said judgment of the coordinate bench of this Court *In the matter of: Smt.Hira Girdhardas Mansata & Ors. (supra)* has no application in the facts and circumstances of the instant case.

40. The decision rendered *In the matter of: 1.Narinderjit Singh; 2. Ranjit Singh & Ors. vs. The State of U.P. & Ors.(supra)* is also clearly distinguishable on fact in the facts of the instant case. In the said decision also the land acquisition proceeding was not concluded and the Section 4 notification was challenged at the threshold. Thus, the ratio of the said decision has no application in the facts and circumstances of the instant case.

41. *In the matter of: Rajmal and etc. etc. vs. State of Rajasthan & Ors. (supra)*, the writ petition was dismissed by holding that due compliance of the said third limb under Section 4(1) of the said Act was made.

42. Inasmuch as, even if this Court accepts that the publication of the substance of the notification in the locality in terms of Section 4(1) of the Act was not made, the question is whether Section 4(1) notification and Section 6 declaration are required to be quashed? In this regard, this Court needs to consider the conduct of the parties and the effect thereof. Under the scheme of the Act, after the possession of the land was taken either under Section 17(2) or Section 16, of the said Act, the lands vested in the State free from all incumbrances, Thereafter, there is no provision under the Act to divest the title which had been vested in the State. Under Section 48(1) of the Act before possession is taken, the State government is empowered to withdraw the land from the acquisition by its publication in the gazette. The title having been vested in the State, the notification under Section 4(1) and declaration under Section 6 of the said Act do not get lapsed and non-compliance of any such statutory provisions does not have the effect of divesting title of the land already vested in the government free from all encumbrances. This proposition was settled *In the matter of: State of Rajasthan & Ors. vs. D.r. Laxmi & Ors., reported at (1996) 6 SCC 445.*

43. After perusing the records and satisfying ourselves, this Court is of the firm

opinion that the substance of the notification under Section 4(1) of the Land Acquisition Act was duly published in the locality. it is not the law and could not and would not be the law that publication of the substance of Section 4(1) notification in the locality should be established beyond shadow of doubt and benefit should be extended to the owner or interested person on the land. Obvious thereto, presumption under Section 114 of the Evidence Act had been raised that official acts had been properly done unless proved otherwise. This court is satisfied that, it was properly done. It is settled that the publication of notification under Section 4(1) in the gazette and substance thereof in the locality is a mandatory requirement and the omission thereof renders the notification void. But as discussed earlier, since substance of the notification was published in the locality, the third limb of the requirement under Section 4(1) of the said Act stood complied with.

44. The other contention of the Learned Senior Counsel for the appellants that the learned Judge had mixed up the issues of land acquisition with that of a proceeding under West Bengal Estate Acquisition Act is of no relevance and consequence, since upon a careful scrutiny of the records, this Court is of the firm view that the provisions under Section 4(1) of the Land Acquisition Act were duly and strictly complied with and also since the land had already been vested with the State free from any encumbrances no reversion in the acquisition process is permitted. Thus, the acquisition of the said land was lawful.

45. However, the Writ Court being a court of equity and this court is in continuation thereof adjudicating the mandamus appeal has jurisdiction and authority to mould the relief to achieve the ends of justice and to ensure that justice is seen to have been done between the parties. Accordingly the State authorities are directed to complete the Section 18 proceeding pending before it arising out of the said land and/or connected thereto and come to a logical conclusion thereof in accordance with law within a period of 8 months from the date of communication of this judgment and order.

46. In view of the foregoing discussions and reasons, this appeal **MAT 925 of**

2009 stands dismissed, consequently the **writ petition no. 31978 (W) of 2008** also stands dismissed.

47. There shall, however, be no order as to costs.

(Aniruddha Roy, J.)

I. P. Mukerji, J.

I have had the privilege of going through in draft the judgment proposed to be delivered by my brother. I am in full agreement with the reasons contained in it and the conclusions reached by his lordship on that basis. I would like to add a few observations of my own.

An analysis and appreciation of a division bench judgment of our court by Mrs. Justice Ruma Pal in **Smt. Hira Girdhardas Mansata & Ors. Vs. State of West Bengal and Ors.** reported in **(2000) 1 Cal LT 407** is very necessary in my opinion. In that case also the question arose whether a public notice as envisaged by Section 4 of the Land Acquisition Act was given. For the purpose of implementation of this section, administrative instructions were issued by the West Bengal government in their land manual that a copy of the notice had to be affixed “at one or more place or places on or near the land proposed to be acquired and also at a conspicuous public place.....”. In that case public notice was not so given. Following the dicta of the Supreme Court in **Khub Chand and Ors. Vs. State of Rajasthan and Ors.** reported in **AIR 1967 SC 1074**, **Collector (District Magistrate) Allahabad and Anr. vs. Raja Ram Jaiswal** reported in **AIR 1985 SC 1622**, **Syed Hasan Rasul Numa and Ors. Vs. Union of India and Ors.** reported in **AIR 1991 SC 711** and **State of Maharashtra and Anr. vs. Umashankar Rajabhau and Ors.** reported in **(1996) 1 SCC 299** and of the Allahabad High Court in **Sarfaraz Husain and Ors. vs. State of Uttar Pradesh and Ors.** reported in **AIR 1991 Allahabad 324**, the division bench held that strict compliance with regard to giving of a public notice under Section 4 had to be made and that any deviation, departure, deficiency or

shortfall in compliance would render the section 4 notification void. It was so adjudged.

Towards the close of hearing of the appeal, learned counsel for the respondent government disclosed a document issued by the Collector on or about 24th November, 2007 which recorded that the subject notification was being sent to “local government offices and panchayat bodies in the locality for wide publicity and for displaying the notice in the office notice boards. It also said that a copy of the notice would be displayed “at a conspicuous place near the land proposed to be acquired.”

Public notice at convenient places in the locality must mean those public places which are conveniently accessible to the public and so accessed by them. Members of the public, generally and frequently visit those places. Local government offices and offices of panchayat bodies are, in my opinion such convenient places. The Collector, having issued this direction, there is every reason to presume that notices of this acquisition were displayed in those public places. The court can draw this presumption under Section 114 read with illustration (e) under it, of the Indian Evidence Act, 1872, that an act of the government is presumed to have been done regularly unless proved otherwise. No evidence has been laid by the appellant to rebut this presumption.

In my opinion, there was due compliance with giving notice under Section 4.

This was the only point urged in the appeal. There is no merit in it. I would also dismiss the appeal.

Urgent certified photo copy of this judgment and order, if applied for, be furnished to the appearing parties on priority basis upon compliance of necessary formalities.

(I. P. Mukerji, J.)