

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

RESERVED ON: 02.05.2024
DELIVERED ON: 09.05.2024

CORAM:

**THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

WPA 27353 OF 2017

I.A. NO. CAN 1 OF 2021

SHANTI GANATANTRA SANGHATI MANCHA AND OTHERS

VERSUS

THE STATE OF WEST BENGAL AND OTHERS

WITH

WPA 10590 OF 2019

MIRZA JASIM UDDIN AND OTHERS

VERSUS

THE STATE OF WEST BENGAL AND OTHERS

WITH

WPA 13936 OF 2017

IA NO: CAN 2 OF 2017 (OLD NO: CAN 8860 OF 2017),

CAN 3 OF 2017 (OLD NO: CAN 8944 OF 2017),

CAN 4 OF 2020 (OLD NO: CAN 5811 OF 2020),

**CAN 5 OF 2020 (OLD NO: CAN 5813 OF 2020),
CAN 6 OF 2021, CAN 7 OF 2022, CAN 8 OF 2022, CAN 9 OF 2023
SHANTI GANATANTRA SANGHATI MANCHA AND OTHERS
VERSUS
THE STATE OF WEST BENGAL AND OTHERS**

Appearance:-

**Mr. Samim Ahammed, Adv.
Mr. Arka Maiti, Adv.
Ms. Solani Bhattacharyya, Adv.
Mr. Aniruddh Singh, Adv.
Ms. Ambiya Khatoon, Adv.
Mr. Arka Ranjan Bhattacharya, Adv.**

**.....For the Petitioners
(In WPA 10590 of 2019) and
(WPA 13936 of 2017)**

Mr. Sirshanya Bandopadhyay, Adv.

**.....For the State.
(In WPA 27353 of 2017)**

**Mr. Jaydip Kar, Ld. Senior Advocate
Mr. Siddhartha Ghosh, Adv.**

.....For the Respondent No. 4

**Mr. Abhratosh Majumdar, Ld. Senior Advocate.
Mr. Jishnu Chowdhury, Adv.
Mr. Chayan Gupta, Adv.
Mr. Sandip Dasgupta, Adv.
Mr. Saaqib Siddique, Adv.
Mr. Debayan Sen, Adv.**

....For the WBHIDCO

**Mr. Amit Kumar Nag, Adv.
Ms. Pritha Bhaumik, Adv.**

**....For the Respondent No. 9
(In WPA 27353 of 2017)**

JUDGMENT

(Judgment of the Court was delivered by T.S. Sivagnanam, CJ.)

1. All the three writ petitions were heard analogously as the common challenge is to the land acquisition done by the State of West Bengal and the project conceived and developed by the West Bengal Housing Infrastructure Development Corporation Limited (HIDCO).
2. WPA Nos. 27353 of 2017 and 13936 of 2017 have been filed as public interest litigations by an organisation and five individuals who are the petitioners.
3. WPA 10590 of 2019 has been filed by seven petitioners claiming to be land losers whose land were acquired under the provisions of the Land Acquisition Act, 1894 (1894 Act).
4. In WPA 27353 of 2017, the petitioners prayed for quashing the entire land acquisition proceedings and for a declaration to declare the decision of the respondents to use the acquired land for real estate business as being illegal and amounts to fraud and void; for a writ of mandamus to declare the cabinet decision to transfer the land from the West Bengal Industrial Infrastructure Development Corporation (IIDC) to HIDCO and for other consequential and incidental relief.
5. WPA 13936 of 2017 also seeks for an identical prayer. The petitioners in WPA 10590 of 2019 have prayed for a Writ of Prohibition to restrain any construction being done till the Land Use and Development Control Plan (LUDCP) is prepared; to direct the respondents to prepare fresh LUDCP and to restrain the authorities from filling up the water bodies and for

cancellation of the entire land acquisition proceedings on the ground that the respondents have played fraud on the erstwhile owners of the land.

6. In WPA 13936 of 2017 an interim order was passed on 31.10.2017 without prejudice to the rights and contention of the parties not to move further towards settlement of the land until further orders. On account of this interim order, the project has come to a standstill. Subsequently, by order dated 03.05.2018, the court observed that the writ application involves interpretation of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition Act, 2013. The decision of the Hon'ble Supreme Court in **State of Haryana and Others Versus M/s. G. D. Goenka Tourism Corporation Limited and Another** dated 21.02.2018 the hearing of the writ petition was adjourned till such time the Larger Bench of the Hon'ble Supreme Court decides the issue of interpretation of Section 24 of the 2013 Act.

7. The task of deciding the first question namely with regard to the interpretation of Section 24 of the 2013 Act has become easier in the light of the Larger Bench decision of the Hon'ble Supreme Court in **Indore Development Authority Versus Manoharlal and Others**¹. The Hon'ble Supreme Court in the conclusions recorded from paragraphs 365 to 366.9 has summed up the legal position in the following terms:-

365. Resultantly, the decision rendered in Pune Municipal Corpn. is hereby overruled and all other decisions in which Pune Municipal Corpn. has been followed, are also overruled. The decision in Sree Balaji Nagar Residential Assn. cannot be said to be laying down good law, is overruled and other

¹ (2020) 8 SCC 129

decisions following the same are also overruled. In Indore Development Authority v. Shailendra, the aspect with respect to the proviso to Section 24(2) and whether "or" has to be read as "nor" or as "and" was not placed for consideration. Therefore, that decision too cannot prevail, in the light of the discussion in the present judgment.

366. In view of the aforesaid discussion, we answer the questions as under:

366.1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1-1-2014, the date of commencement of the 2013 Act, there is no lapse of proceedings. Compensation has to be determined under the provisions of the 2013 Act.

366.2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the 2013 Act and under the 1894 Act as if it has not been repealed.

366.3. The word "or" used in Section 24(2) between possession and compensation has to be read as "nor" or as "and". The deemed lapse of land acquisition proceedings under Section 24(2) of the 2013 Act takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

366.4. The expression "paid" in the main part of Section 24(2) of the 2013 Act does not include a deposit of compensation in court. The consequence of non-deposit is provided in the proviso to Section 24(2) in case it has not been deposited with respect to majority of landholdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act. In case the obligation under Section 31 of the Land Acquisition Act, 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the 2013 Act has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the 1894 Act.

366.5. In case a person has been tendered the compensation as provided under Section 31(1) of the 1894 Act, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). The landowners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the 2013 Act.

366.6. The proviso to Section 24(2) of the 2013 Act is to be treated as part of Section 24(2), not part of Section 24(1)(b).

366.7. *The mode of taking possession under the 1894 Act and as contemplated under Section 24(2) is by drawing of inquest report/ memorandum. Once award has been passed on taking possession under Section 16 of the 1894 Act, the land vests in State there is no divesting provided under Section 24(2) of the 2013 Act, as once possession has been taken there is no lapse under Section 24(2).*

366.8. *The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the 2013 Act came into force, in a proceeding for land acquisition pending with the authority concerned as on 1-1-2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.*

366.9. *Section 24(2) of the 2013 Act does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the 2013 Act i.e. 1-1-2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition.*

8. Paragraphs 366.3, 366.4, 366.5 and 366.7 would be relevant to the case on hand. The legal principle that can be culled out from the above

decision of the Larger Bench of the Hon'ble Supreme Court is that the deemed lapse of land acquisition proceedings under Section 24(2) of the 2013 Act takes place where due to inaction of the authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. It was held that in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse. Non deposit of compensation in court does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority holdings for five years or more, compensation under 2013 Act has to be paid to the land owners as on the date of the notification for land acquisition under Section 4 of the 1894 Act.

9. Further it has been held that in case a person has been tendered the compensation as provided under Section 31(1) of the 1894 Act it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The land owners who had refused to accept compensation or who has sought reference for higher compensation cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the 2013 Act. It has been further held that the mode of taking possession under 1894 Act and as contemplated under Section 24(2) of the 2013 Act is by drawing of an inquest report/memorandum. Once award has been passed on taking possession under Section 6 of the 1894 Act, the land vests in the state, there is no divesting provided under

Section 24(2) of the 2013 Act, as once possession has been taken there is no lapse under Section 24(2) of the Act.

10. In all the three writ petitions, it appears that a specific ground has not been raised by referring to Section 24(2) of the 2013 Act except for a faint plea in WPA 13936 of 2017 that for a long period of time, the possession of the land was not divested from the land owners and on account of the same, the land has to be restored back in the names of the original land owners. Nonetheless, the Hon'ble Division Bench in its order dated 03.05.2018 deferred the hearing of the writ petition by observing that the writ application involves interpretation of Section 24 of the 2013 Act and referred to the order passed by the Hon'ble Supreme Court on 01.02.2018 directing the High Courts not to deal with any cases relating to the interpretation of or concerning Section 24 of the 2013 Act. In the light of the decision of the Larger Bench of the Hon'ble Supreme Court in **Indore Development Authority** (supra), the contention which appears to have been argued in the writ petitions earlier referring to Section 24 of the 2013 Act has to be rejected and decided against the writ petitioners and accordingly the same is decided.

11. Having steered clear of this issue, we now deal with the grounds of challenge as submitted by the learned advocate for the petitioners.

12. The first contention is that the lands were acquired for an industrial development by IIDCO and at present there is a change of user permitting HIDCO to develop a housing project and this change of user is impermissible and illegal in the light of the embargo under the West Bengal

Industrial Infrastructure Development Corporation Act, (1974 Act). It is contended that no Land Use and Development Control Plan was prepared before the township was planned by HIDCO and therefore the entire proceedings are illegal. By referring to Section 34 of the 1974 Act, it is submitted that disposal of the land by IIDCO can be only in terms of Section 34 of the 1974 Act and in no other manner more particularly, because the purpose of the 1974 Act is for establishing industrial infrastructure in the State of West Bengal and on account of the change of user and handing over the land to HIDCO, the entire land acquisition proceedings are to be held to be illegal and the land owners have a right to get back the land as the purposes for which the land was acquired has been changed. In this regard, the learned advocate has drawn our attention to the notification issued under Section 4(1) of the 1894 Act which sets out the purpose for acquisition namely "New Growth Centre". Several paragraphs of the affidavit-in-opposition filed by the State in WPA 13936 of 2017 were also referred to.

13. It is further submitted that the Cabinet decision to transfer the land to HIDCO from IIDCO was taken prior to the preparation of the land used plan. Elaborate submissions were made as to how the land used development plan has to be prepared in terms of the West Bengal Town and Country Planning Act and the steps to be adhered to. It is further submitted that the notification of the land use development plan was on 28.03.2017 much after the project was conceived and developed by HIDCO and this is illegal since the preparation and notification of the land used development

plan should precede the project and not after the project has been developed. In this regard, reference was made to the decision of the Hon'ble Division Bench of this Court in **Jogen Chowdhury and Others Versus State of West Bengal and Others** ² wherein direction was issued for preparation of the development plan.

14. Further it is submitted that the District Planning Committee which is required to be constituted in terms of the West Bengal District Planning Committee Act, 1984 had not been constituted which is also an illegality. In support of his contention, the learned advocate for the petitioner referred to **State of Bombay Versus R.S. Nanji** ³, **Munshi Singh and Others Versus Union of India** ⁴, **Noida Entrepreneurs Association Versus Noda and Others** ⁵, **Royal Orchid Hotels Limited and Another Versus G. Jayarama Reddy and Others** ⁶.

15. Mr. Abhratosh Majumdar, learned Senior Advocate appearing for the HIDCO submitted that the land once acquired for a public purpose may be used for another public purpose and undoubtedly the scheme conceived and developed by the HIDCO is in public interest. In support of such contention, reliance was placed on the decisions of the Hon'ble Supreme Court in **Union of India and Others Versus Jaswant Rai Kochhar and Others** ⁷, **Sulochana Chandrakant Galande Versus Pune Municipal**

² 2013 SCC Online Cal 22993

³ 1956 SCR 18

⁴ (1973) 2 SCC 337

⁵ (2011) 6 SCC 508

⁶ (2011) 10 SCC 608

⁷ (1996) 3 SCC 491

Transport and Others ⁸, **Northern Indian Glass Industries Versus Jaswant Singh and Others** ⁹. Further it is reiterated that developing a township and industrial development are both public purposes. HIDCO made a public announcement in July 2017, about the said project. By referring to the decision in **Indore Development Authority**, it is submitted that the possession having been vested cannot be divested even assuming there is a change of user and the erstwhile land owner cannot challenge the acquisition proceedings as it is required to be seen as to what would be the majority of the land holding and majority does not depend upon number of holdings acquired but what constitute the majority as per acquired area under the notification. In this regard, paragraph 190 of **Indore Development Authority** was referred. Further it is submitted that the petitioners in WPA 10590 of 2019 were erstwhile land owners of a minisale estate and at this juncture challenge to the acquisition proceedings which is concluded long back is not maintainable. The learned Senior Advocate also factually distinguished the decisions relied on by the learned advocate for the appellant.

16. Mr. Jaidip Kar, learned Senior Advocate appearing for the Sriniketan Shantiniketan Development Authority namely the 7th and 8th respondents in WPA 10590 of 2019 submitted that by the time the writ petition was filed, the revised land used development plan had come into force and in this regard, referred to the averments set out in the affidavit-in-opposition filed by the respondent 7th and 8th. Referring to a list of dates, it is submitted that

⁸ (2010) 8 SCC 467

⁹ (2003) 1 SCC 335

the Land Use and Development Control Plan was approved and published and the notification dated 09.03.2017 was published in the Kolkata Gazette dated March 28, 2017. Further it is submitted that no objection was received after initial publication of the Land Use Development Control Plan and even after final publication no steps have been taken by any person in terms of Section 39 of the Town and Country Planning Act and therefore as on date, it is not open to challenge in view of the embargo under Section 39(3) of the Township and Country Planning Act. Therefore, it is submitted that the challenge to the land acquisition proceedings on the ground that the Land Use and Development Control Plan was not notified has to be fail and the writ petition has to be dismissed.

17. Mr. Amit Kumar Nag, learned advocate for IIDC submitted that 195.495 acres was acquired under the 1984 Act for setting up a “New Growth Centre” at Bolpur during 2001-2004 by publishing notification under Section 4 and 6 of the 1894 Act. IIDC received funds from the Government for acquisition of land and paid the entire acquisition cost including administrative charges to the Collector, Birbhum. The possession of the land was handed over to IIDC in phases during 2005-2006 and the deed of transfer was executed by the Land and Land Reforms Department, Government of West Bengal and IIDC had 21.06.2012 out of the total land which was acquired and transferred IIDC allotted land to two major public sector undertakings of the State Government namely WEBEL and WBSIDC Limited for purposes and objects of promoting trade, commerce and industries comprising 55.0436 acres in total. An extent of 7.995 acres was

allotted initially to the Department of Panchayat and Rural Development for promotion of rural based micro level products and to WBSEDC Limited for necessary electricity supply to the prospective units.

18. It is further submitted that the Cabinet of the West Bengal State Government took a decision of 12.06.2015 that surplus land will be relinquished free from all encumbrances in favour of the Land and Land Reforms Department as per clause 162(1) of the land acquisition manual. Accordingly, the Department of Commerce and Industry had directed IIDC by memo dated 13.10.2015 to relinquish the land in compliance of the cabinet decision. Accordingly, IIDC relinquished about 127.456 acres of available unallotted land in favour of the Land and Land Reforms Department, Government of West Bengal on 18.11.2015. The said portion of land has been handed over to the Urban Development Department, Government of West Bengal for urbanisation. With regard to the contention raised by the petitioners in WPA 10590 of 2019, Mirja Jasim, the plot of land which was said to be owned by the said person was not relinquished by IIDC to the Land Reforms Department and they were handed over to WBSIDC Limited for purposes and objects of the WBIIDC Act, 1974 and therefore the writ petition is not maintainable for the said plot atleast in view of the admitted position by the writ petitioners. It is further submitted that plot no. 2104 allegedly owned by Jagabandhu Ghosh was never taken over of IIDC and therefore question of utilization by IIDC for any purpose does not arise, and the writ petition is defective due to wrong submissions.

19. It is further submitted that plot No. 325 allegedly owned by Binay Saha has been allotted and handed over to WBSIDC Limited for public purpose and therefore the challenge to the same has to fail. It is submitted that Section 34 of the 1974 Act in Sub Section (1) states that subject to any directions given by the State Government under the Act, the Corporation may dispose of any land in the terms set out in Clauses A and B in Section 34(1) and accordingly IIDC had relinquished the land as per directions of the State Government. Further it is submitted that IIDC did not transfer the land as claimed by the writ petitioners but has only relinquished their right. With the above submissions, the learned advocate prayed for dismissal of the writ petition.

20. Mr. Sirshanya Bandyopadhyay, learned advocate appearing for the State while adopting the submissions made by the learned Senior Advocates appearing for the HIDCO and the land development authorities, placed reliance on the decision of the Hon'ble Supreme Court in **Northern Indian Glass Industries Versus Jaswant Singh and Others** ¹⁰ V. **Chandrasekaran and Another** ¹¹ **Shyamal Sircar and Others Versus The State of West Bengal and Others** ¹² and **Shyamal Sircar and Others Versus The State of West Bengal and Others** ¹³.

21. We have elaborately heard the submissions made on either side and carefully perused the materials placed on record.

¹⁰ (2003) 1 SCC 335

¹¹ (2012) 12 SCC 133

¹² 2015 SCC Online Cal 2965

¹³ 2018 SCC Online Cal 4782

22. The first question to be decided as to whether the acquisition proceedings are to be set aside on the alleged ground that there has been change of user of the land from the purpose for which it was acquired and the purpose for which it is presently utilised. This is purely a question of law and much does not revolve on facts. Nonetheless, if facts are required to be mentioned the same would be done at the appropriate stage.

23. In **Jaswant Rai Kochhar**, the Hon'ble Supreme Court, was considering a case where notification under the 1894 Act was published acquiring the land for housing scheme and the same was challenged on the ground that the appellant therein proposed to use the land for district centre i.e. commercial purpose. The appeal filed by the State was allowed by the Hon'ble Supreme Court holding that the construction of the District Centre for commercial purpose itself is a public purpose; it is a well settled law that the land sought to be acquired for public purpose may be used for another public purpose; therefore the notification as mentioned the land is sought to be acquired for housing scheme but it is sought to be used of district centres, public purpose does not cease to be public purpose and the nomenclature mentioned in the notification under Section 4(1) as housing scheme cannot be construed to be a colourable one; the notification under Section 4(1) of the 1894 Act could not have been quashed on the ground that the land is sought to be used for district centre namely for commercial purpose and that the notification under Section 4(1) cannot be quashed on the ground of change of user.

24. In ***Northern Indian Glass Industries***, the Hon'ble Supreme Court held that it is well settled position in law that after passing the award and taking possession under Section 16 of the 1894 Act, the acquired land vests with the Government free from all encumbrances; even if the land is not used for the purpose for which it is acquired, the land owner does not get any right to ask for re-vesting the land in him and to ask for restitution of possession. It was further held if the land was not used for the purpose for which it was acquired, it was open to the State Government to take action but that did not confer any right on the erstwhile land owners to ask for restitution of the land.

25. In ***Pune Municipal Transport and Others***, while dealing with the provisions of the Urban Land, (Ceiling and Regulation) Act, 1976, the Hon'ble Supreme Court held that the provisions of Section 10(3) of the Land Ceiling Act, 1976 are analogous to Section 16 of the 1894 Act; acquisition proceedings cannot be withdrawn/abandoned in exercise of the powers under Section 48 of the 1894 Act or Section 21 of the General Clauses Act, 1897 once possession of the land has been taken over.

26. In ***C. Padma Versus Government of Tamil Nadu*** ¹⁴ the Hon'ble Supreme Court held that if by virtue of valid acquisition of land, the land stands vested in the State, thereafter the claimants are not entitled to restoration of possession on the grounds that either the original public purpose has ceased to be in operation or the land could not be used for any other purposes.

¹⁴ (1997) 2 SCC 627

27. In ***Gulam Mustafa Versus State of Maharashtra*** ¹⁵, the acquisition was for a municipality, the Hon'ble Supreme Court held that once the original acquisition is valid and title has vested in the municipality, how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. It was further held that there is no principle of law by which a valid compulsory acquisition stands voided because long later the requiring authority diverts it to a public purpose other than one stated in the declaration.

28. In ***State of Himachal Pradesh Versus Tarsem Singh*** ¹⁶, the Hon'ble Supreme Court held that the terminology "free from all encumbrances" used in Section 16 of the 1894 Act, is wholly unqualified and would encompass the extinguishing of "all rights, title and interest including the easementary rights" when the title vests in the State.

29. In ***Satendra Prasad Jain Versus State of Uttar Pradesh*** ¹⁷, the Hon'ble Supreme Court held that once land vests in the State free from all encumbrances, it cannot be divested.

30. Thus, the law which could be summarised based on the above decisions is that once the land is acquired, it vests in the State free from all encumbrances. It is not concern of the land owner how his land is used and whether the land is being used for the purpose for which it was acquired or for any other purpose; he (land owner) becomes a *persona non grata* once the land vests in the state; he has a right to get compensation only for the

¹⁵ (1976) 1 SCC 800

¹⁶ (2001) 8 SCC 104

¹⁷ (1993) 4 SCC 369

same and the person interested cannot claim the right of restoration of land on any ground whatsoever. The same principle has been reiterated in **V. Chandrasekaran and Another**.

31. In **Shyamlal Sircar and Others**, the petitioner's complained of being cheated by the State in their land being confiscated for a pittance only to be ultimately made over to the realtors for a high-end residential complex being developed without the land being used for any public purpose. The court after noting the facts of the case observed that it cannot be said that the petitioners therein are entitled to reclaim their land acquired by the state for Tyre Corporation of India Limited (TCIL) which was controlled by the Central Government merely because, it was ultimately sold to a private party and not used for any public purpose.

32. In the light of the above legal position, the erstwhile land owners who are petitioners in WPA 10590 of 2019 are not entitled for the relief of restitution of land as sought for by them. Further as pointed out by the learned advocate appearing for the IIDC, the averments in the said writ petition are factually incorrect in the light of the explanation offered by the IIDC which we have noted in the preceding paragraphs. Thus, the prayer is wholly misconceived and liable to be rejected.

33. The learned Advocate for the petitioner at great length pitched his argument by referring to the provisions of the 1974 Act. It is submitted that the 1974 Act was an act to make a special provision for securing development of trade, commerce and industries on well planned basis in the state of West Bengal and for that purpose to establish an industrial

infrastructure development corporation and for matters connected therewith or incidental thereto. It is submitted that land was acquired for an industrial purpose to be utilised by IIDC which is a corporation established under the provisions of the 1974 Act and if that be so, the disposal of the land can be and shall be only in accordance with Section 34 of the Act. Section 34 of the said act of which Sub-sections (1) and (2) would be of relevance is quoted for better appreciation:-

34. (1) Subject to any directions given by the State Government under this Act, the Corporation may dispose of-

- (a) any land acquired by the State Government and transferred to it, without undertaking or carrying out any development thereon; or*
- (b) any such land after undertaking or carrying out such development as it thinks fit :*

to such persons, in such manner and subject to such terms and conditions, as it considers expedient for securing the purposes of this Act.

(2) The powers of the Corporation with respect to the disposal of land under sub-section (1) shall be so exercised as to secure, so far as practicable, that---

- (a) where the Corporation proposes to dispose of by sale any such land without any development having been undertaken or carried out thereon, the Corporation shall offer the land in the first instance to the persons from whom it was required, if they desire to purchase it, subject to such conditions as to its development and use as the Corporation may think fit to impose;*

34. Sub-section (1) of Section 34 commences by stating that subject to any directions given by the State Government under the Act (1974) when corporation may dispose of any land acquired by the State Government transferred to it, without undertaking or carrying out any development thereon or any such land after undertaking or carrying out such development as it thinks fit to such persons in such manner and subject to terms and conditions as it considers expedient for securing the purposes of this Act.

35. The said provision deals with the disposal of land by IIDC which land was acquired by the State Government and transferred to IIDC. The provision is clear enough to state that the disposal of land placed in the hands of IIDC is subject to the directions given by the State Government and it can do so without undertaking or carrying out any development thereon or after undertaking or carrying out such development.

36. Sub-section (2) deals with the power of the corporation with respect to disposal of the land under Sub-section (1) of Section 34 and it shall be so exercised so as to secure, as far as practicable where IIDC proposes to dispose of by sale any such land without any development having been undertaken or carried out the IIDC shall offer the land in the first instance to the persons to whom it was acquired, if they decide to purchase it, subject to such conditions as to its development and use as the corporation may think to impose. Clause (a) of Section 34(2) speaks of disposal by IIDC by sale and in the event, such a decision was taken at the first instance, option to be given to the land loser to purchase the land if he so desires. Thus, Section 34 can be of no assistance to the case of the petitioners as it

deals with and refers to the disposal of the land by IIDC. As pointed out earlier in the instant case the land was not transferred but the rights were relinquished by IIDC to the Land and Land Reforms Department. The rights over the land which were relinquished was not the entire extent of 195.495 acres but only 127.455 acres. The remaining extent has been allotted to public sector undertakings of the Government of West Bengal for the purposes of promoting trade, commerce and industries. A portion of the land has been allotted to the electricity distribution company for providing necessary electricity supply for the prospective unit and only the balance was relinquished in terms of the cabinet decision taken on 12.06.2015. The petitioners have no semblance of right to question the decision of the Cabinet or the consequential relinquishment in the light of the law which has been set out in the preceding paragraphs explaining the effect of vesting of the land in the State free from all encumbrances. Therefore, such a plea raised by the petitioners has to necessarily fail and to be rejected.

37. The learned Advocate for the petitioner had relied on the decision in **Munshi Singh** wherein the land acquisition proceedings were quashed. On facts the Hon'ble Supreme Court found that notification issued under Section 4 of 1894 Act was vague and inadequate and therefore, the land owners were wholly unable to object effectively and exercise the right under Section 5A of the 1894 Act. In our view the said decision can be of no assistance to the case of the petitioners and it is factually distinguishable as the notification in the said case was quashed on the ground it was vague. Reliance was placed on the decision in **Noida Entrepreneurs Association**. In the said case, the legislature of Uttar Pradesh enacted the UP Industrial

Area Development Act, 1967 for the purpose of proper planning and development of Industrial and residential units and to acquire and to develop the land for the same. It was held that by virtue of the provisions of Section 6 (2)(b) of the UP Act, 1976 it is a statutory requirement that in the plan to be prepared by Noida, it must necessarily provide as to for particular purpose an area/ site to be utilised, namely industrial, commercial or residential. On facts it was found that there is nothing on record to say that any amendment had been made either in the master plan or in the 1991 Regulation before the change of user when a city park was abolished and a new residential sector was carved out comprising of 200 plots. In the said factual background Hon'ble Supreme Court held that the State actions are required to be non arbitrary and justified on the touchstone of Article 14 of the Constitution. The action or orders of the State or State instrumentality would stand vitiated if it lacks bona fide, as it would only be a case of colourable exercise of powers.

38. To be noted, the case was a public interest litigation wherein a direction was sought for to direct the CBI to investigate into the land allotments and conversions made by Noida for over 10 years. The Court took note of the factual matrix and held that the Court has to examine whether any action is warranted against and IAS officer who was impleaded in his personal capacity and whether it is permissible to initiate disciplinary proceedings against him as by then he had reached the age of superannuation and had retired and the alleged misconduct had been committed by him in 1993-94. In paragraph 24 of the said judgment, the Court on facts found that there was gross procedural violation and award of

the contract amounts to doing something indirectly which may not be permissible to be done directly and therefore held that the course of action is not permissible under law. In the background of those facts where the Court came to the definite conclusion that there has been gross procedural irregularity and also that there was an allegation against an IAS officer rendered the findings which were referred to by the learned Counsel for the petitioner. We have no hesitation to hold that the decision can in no manner assist the case of the petitioner and it is wholly distinguishable on facts.

39. In ***Royal Orchid Hotels Limited and Another***, the Hon'ble Supreme Court among other things considered the question as to whether the High Court was justified in directing restoration of the land to the Respondent 1 therein. In paragraph 37 of the judgment the Court has analyzed the facts and found as to how the power has been exercised in an illegal and fraudulent manner. In the said case, the lands were acquired by the State Government at the instance of the Karnataka State Tourism Development Corporation for a specified purpose i.e. golf-cum-hotel near Bangalore airport and the said land were transferred by the corporation to a private individual and corporate entities and this was the question for determination in the said case. The said decision is inapplicable to the facts and circumstances of this case.

40. Having dealt with the decisions which were referred to by the learned Advocate for the petitioner, we are left with the last issue with regard to the validity of the project conceived and developed by HIDCO on the ground that the Land Use and Development Control Plan was not prepared.

41. The learned Advocate for the petitioner took great pains to invite us through the various provisions of the West Bengal Town and Country Planning and Development Act, 1979 and the various other factual details to support this contention that the project has been developed by HIDCO much prior to the notification of the development plan which is illegal. In other words, the submission appears to be "the cart has been put before the horse". First we are required to see the factual position in the case which appears to have not been controverted by the petitioners. It is evident from the stand taken by the planning authorities namely the Respondents 7 and 8 in WPA 10590 of 2019. The said development authority was established under the provisions of the 1979 Act during December, 1989. On 25.01.2010 the Urban Development Department, Government of West Bengal issued a notification stating that specified Mouzas within the jurisdiction of the development authority (Respondents 7 and 8) required preservation and conservation and for that purpose the development authority would prepare a detailed development plan to carry out such amendment of the development plan. During 2012, WP No. 8341 (W) of 2012 was filed with a prayer to preserve and protect Shantiniketan established by Rabindranath Tagore complying or violating of the directions issued by the Hon'ble Supreme Court in ***Sushanta Tagore and Others Versus Union of India and Others***¹⁸.

42. Prayer was made to rescind and recall/ withdraw the decision to allow construction of a building on "Ahoai" land in Shantiniketan by a developer and to demolish the construction raised in an illegal manner. The

¹⁸ (2005) 3 SCC 16

Hon'ble Division Bench in the said case **Jogen Chowdhury** (Supra) allowed the writ petition directed the modification of the development plan by the development authority in terms of the notification dated January 25, 2010 issued under the provisions of the Town Planning Act, 1979. The private respondents in the said writ petition had filed an appeal before the Hon'ble Supreme Court in SLP (C) No. 2822 9 of 2013 and Hon'ble Supreme Court by order dated 6.9.2013 directed the respondents therein to maintain status quo as obtaining on the date of the order in all respects with regard to subject buildings as well as with the subject lands. It is submitted that the said special leave petition is still pending. The development authority has also filed an appeal against the very same judgment for expunging certain adverse observations made by the Hon'ble Division Bench in its judgment dated 22.8.2013.

43. In terms of the directions issued by the Division Bench dated 22.8.2013, the development authority issued work order to the Department of Architecture and Regional Planning, Indian Institute of Technology, Kharagpur for preparation of revised Land Use Development Control Plan, Sriniketan- Santiniketan Development Planning Area for 44 mouzas measuring for 106.281 square kilometers. In the special leave petition filed by the developer The Hon'ble Supreme Court had passed various directions from time to time and by order dated 23.03.2015 made it clear that the stay of demolition does not mean that the Apex Advisory Committee is not required to carry on its work that has already been entrusted by the State Government. In the said appeal, the Hon'ble Supreme Court by order dated 9.3.2018 had granted leave and as of now Civil Appeal No. 2920 of 2018 is

stated to be pending. The work entrusted to IIT, Kharagpur was completed and the revised Land Use Development Control Plan prepared by IIT was submitted to the development authority during May, 2016 which was in turn forwarded to the State Government for approval. The Government of West Bengal, Urban Development Department, Town and Country Planning branch by memo dated 9th June 2016 addressed to the executive officer of the development authority informed that with regard to the revised Land Use and Development Control Plan for Sriniketan-Shantiniketan planning area as submitted by them, provisional approval of the State Government under Section 35 of the 1979 Act for publication of the revised Land Use Development Control Plan of Sriniketan-Santiniketan planning area is being given subject to incorporation of few observations and modifications as suggested by the department which was appended to the said communication. Pursuant to the provisional approval granted by the State Government, the Development authority published notification dated 16.6.2016 in the Kolkata Gazette dated 22.6.2016 inviting objections in writing from any person with respect to the revised Land Use and Development Control Plan within 60 days from the date of publication of the notification. In the affidavit filed by the Respondents 7 and 8 it has been stated that the notification was also published in Anandabazar Patrika and The Telegraph on 26.06.2016 and in Aajkal and The Statesman on 2.7.2016 and no objections were received to the revised Land Use Development Control Plan within the time periods stipulated in the notification. Since the Government while granting provisional approval by order dated 9th June 2016 had incorporated few observations and modifications, suggested by the

Government to IIT Kharagpur with the request to modify the draft plan to be in tune with the observations / suggestions made by the State Government. IIT, Kharagpur by email dated 27.9.2016 while responding to a letter of the development authority dated 9.6.2016 pointed out that since no objections have been received to the draft Land Use Development Control Plan within the stipulated 60 days period, the development authority can accept the draft as final report. The observations made by the Urban Development Department of the Government of West Bengal requesting for suitable changes was examined by IIT, Kharagpur and their response was given in the said email dated 27.9.2016. One of the comments offered by the IIT, Kharagpur was pertaining to the water bodies use zone. It was clearly stated that the proposed "draft LUDCP" does not advocate filling up of water bodies and the proposal allows usage of water bodies for projects that would affect public convenience without adversely impacting the environment and ecology. The example of the metro corridor extension project from Tollygunge to Garia was referred to where it has been built over a canal. The development authority by letter 26.10.2016 forwarded the final version of the LUDCP prepared by IIT, Kharagpur incorporating the observations and modifications suggested by the Urban Development Department, Government of West Bengal on the draft proposal of the revised LUDCP to enable the Government to take necessary action. By letter dated 10.11.2016 the development authority requested the Government to place the final report of the revised LUDCP as forwarded by them before the Apex Advisory Committee for taking necessary action at their end. Accordingly, the matter was placed in the third meeting of the Apex Advisory Committee held on 14

December, 2016. In the said meeting a powerpoint presentation of the revised LUDCP was presented by IIT, Kharagpur and the revised LUDCP was approved by the Apex Committee. The Government of West Bengal, Urban Development and Municipal Affairs Department, by memo dated 02.03.2017 accorded approval under Section 37 of the 1979 Act. The said approval was notified by the development authority by notification dated 9.3.2017 published in the Kolkata Gazette dated 28.3.2017. In the notification there is reference to Section 38 of the 1978 Act stating that the Development Authority publishes the public notice of approval of the revised LUDCP, copy of which may be inspected in the office of the executive officer of the development authority on any working day.

44. Section 38 of the 1979 Act deals with coming into operation of Land Use and Development Control Plan. The notification dated 9.3.2017 published in the Kolkata Gazette dated 28.3.2017 is in terms of Sub-section (1) and (2) of Section 38. In terms of Sub-section (3) of Section 38, the Land Use and Development Control Plan shall come into operation from the date of publication of the notice in the Official Gazette. Thus, the Land Use Development Planning was approved by the Government and notified by the Development authority had come into force on the date of publication of the notification dated 9.3.2017. Under the 1979 Act, Section 39 provides for remedy to question the validity of the Land Use and Development Control Plan. In terms of Sub-section (1) therein any person aggrieved by it may make an application to the High Court questioning the validity of the LUDCP or any of the provisions contained therein on the grounds that it is not within the powers conferred by the 1979 Act or that any requirement under

the Act or any rules made therein have not been complied with in relation to the making of the LUDCP.

45. Sub-section (2) deals with how such application will be dealt with by the High Court. Sub-section (3) of Section 39 states subject to the Sub-sections (1) and (2) of Section 39 a Land Use Development Control Plan shall not, either before or after it has been approved, be questioned in any manner in any legal proceedings whatsoever. Thus, Section 39 provides for an adequate and efficacious remedy to any person who is aggrieved by the LUDCP and if such a person aggrieved has to approach the High Court within one month of the coming into operation of the LUDCP which will come into operation from the date of publication of the notice in the official gazette. Admittedly, none of the petitioners availed such a remedy and the petitioners cannot be permitted to indirectly seek to do what they could not have done directly. Thus, in the light of the statutory embargo under Sub-section (3) of Section 39 there can be no challenge to the Land Use and Development Control Plan in an indirect manner by way of these writ petitions.

46. The land which was relinquished in favour of the Land and Land Reforms Department in turn handed over to the HIDCO is to be utilised for the purpose of "Gitabitan Township" which is being developed on the basis of the Township policy approved by the State Government in the Cabinet meeting held during June, 2015. HIDCO has been authorised to develop the township as a state level nodal agency by order dated 05.10.2015. The possession of 127.455 acres of land was taken over by HIDCO on 24.02.2016. Possession of 6.11 acres was taken over by HIDCO on

21.9.2016, 12.125 acres was taken over on 8.11.2016. The Urban Development and Municipal Affairs Development, Government of West Bengal relinquished 0.33 acres and 2.99 acres in favour of Land and Land Reforms and Refugee Relief and Rehabilitation department for subsequent transfer to West Bengal Industrial Infrastructure Development Corporation and West Bengal State Electricity Distribution Company Limited. Another parcel of land measuring 31.66 acres was relinquished by the Urban Development departments in favour of the Land and Land Reforms and Refugee Relief Department for subsequent transfer to Higher Education Department for development of Bishwa Bangla Bishwa Bidyalaya. Vishwa Bidyalaya is to be developed by HIDCO with the fund made available by the Higher Education Department. Therefore, it is stated that around 110.705 acres is being utilised for development of Gitabitan township and other infrastructural activities. It is stated that as of June, 2022 (when the affidavit-in-opposition was filed), 90% physical progress has been achieved in respect of internal road works of the township and the works for development plan for the entire township has been completed. 100% development in respect of works of water supply distribution, over-head reservoir, tube well, pump house for internal water supply has been achieved by the Public Health and Engineering Department who were entrusted with the said work. 100% achievement has also been achieved in respect of underground drainage system, drainage pumping station etc. Further it is stated that 95% of work for erection of street light pole with power cable has been completed and construction and distribution of sub-station within the township has also been completed. WBSEDCL has also

achieved 100% development in case of DSS erection and feeder pillar erection, HT and the HT cable laying etc.

47. It is further stated that construction of 112 flats for economically weaker section and three modern buildings were entrusted to the development authority by HIDCO out of which three modern buildings and EWS flats 7 in number consisting of G+3 floors has been constructed by the development authority. Out of the 445 plots development in the township by HIDCO applications were invited in the first phase for allotment of 154 plots and the lottery process for allotment could not be completed in the light of the interim order granted in WP 13936 of 2017 as there was an order restraining the development authority from taking any further step towards settlement of the land until further orders. Thus, it is placed on record that the township work has been substantially completed and the percentage of completion has been set out in Paragraph 20 of the affidavit-in-opposition. It is submitted that on account of the pendency of the matters and the interim order, the infrastructure is getting deteriorated by passage of time. It is submitted that the public purpose has been fully achieved in developing the township where apart from providing housing for different categories including economically weaker section, the Bishwa Bidyalaya is being set up for creating further opportunity of Higher Education, Bishwa Khudrabazar is being developed by Department of MSME, Government of West Bengal and IT park is being developed by Department of Information, Technology and Electronics, Government of West Bengal aiming at educational, cultural and economical growth of the area. Thus, it could be seen on account of the

pendency of the matters, the project has been stalled for a substantial period of time.

48. In the light of the above discussion, we hold that the writ petitions are misconceived and no relief as sought for by the writ petitioners can be granted.

49. In the result, the writ petitions are dismissed and the interim orders granted in the writ petitions are vacated and the respondent HIDCO and other authorities are directed to proceed to commence and complete the project as expeditiously as possible.

(T.S. SIVAGNANAM, C.J.)

I Agree.

(HIRANMAY BHATTACHARYYA, J.)

(P.A- PRAMITA/SACHIN)