

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

Present:

The Hon'ble Justice Aniruddha Roy

W.P.A. 20081 of 2022

Jagannath Prasad Gupta & Ors.

Vs.

Union of India & Ors.

For the petitioners: **Mr. Gopal Chandra Ghosh, Sr. Adv.,
Mr. Rajkrishna Mondal, Adv.,
Mr. Ravi Kumar Shah, Adv.**

For the Respondent No.2: **Mr. Sakya Sen, Sr. Adv.,
Mr. Sanajit Kumar Ghosh, Adv.,
Mr. Suvadeep Sen , Adv.**

For the Resp. No. 3 and 4: **Mr. Jayanta Kumar Mitra, Sr. Adv.,
Mr. Ajoy Krishna Chatterjee Sr.Adv.,
Mr. Ravi Ranjan Kumar, Adv.**

For the added Resp. No.5: **Mr. Amit Kumar Pan, Adv.,
Ms. Tanusri Santra, Adv.**

Reserved on: **10.12.2024**

Judgment on: **17.12.2024**

ANIRUDDHA ROY, J.:

1. The writ petitioners claim to be tenants and sub-tenant in respect of the **ground floor** being a portion of **premises no.1, National Library Avenue, Kolkata-700027** (for short, the property). The private respondent no.5, impleaded subsequently in the writ petition, was the owner of the property and landlord of the petitioners.
2. Metro Railway for the purpose of construction of railway track in between **Mominpur (Ex) to Esplanade Section of Joka – B.B.D. Bag Metro Corridor**, on October 9, 2020 published a gazette notification under **Sub-**

Section (1) to Section 7 of the **Metro Railway (Construction of Works) Act, 1978** (for short, the said 1978 Act) for acquisition of **105.326 sq. mtr.** of land out of the said property. Following the said notification on **October 2, 2020** Metro Railway through its competent authority published a newspaper publication under **Sub-Section (3) to Section 7 of the 1978 Act** inviting objections from the persons interested on the land. On **October 11, 2021** a gazette notification was published under **Sub-Section (1) to Section 10 of 1978 Act** declaring the acquisition of the said **105.326 sq. mtr.** of land from the said property. On **October 31, 2021** a notice was published in the daily newspaper under **Sub-Section 2A to Section 13 of 1978 Act** inviting claim application from the persons having interest in the said property in respect of the said **105.326 sq. mtr.** of land.

3. **Premises No. 7/1 Diamond Harbour Road, Kolkata** is the Office of the **Consulate General of Nepal** (for short, CGN) which is immediately adjacent to the said property. The track alignment drawing of Metro Railway, **Annexure R-3 at page 21** to the supplementary report in the form of affidavit affirmed on behalf of respondent no.2 on April 8, 2024, includes a portion of the Office of the CGN. CGN objected to such acquisition process principally on the ground that in the event of such acquisition, the same would lead to compromise with their safety and security. Negotiation was held between the Ministry of External Affairs, Union of India and the said CGN as would be evident from diverse communication and minutes in this regard, which are part of the record of this proceeding.
4. In the course of prolong negotiation the CGN agreed that it would allow the Metro Railway to carry-out its construction work for laying down the railway

track through their office premises provided an agreed quantum of land would be made over for the office of the CGN from the said property to restore the safety and security conditions of the office of the CGN.

5. Under this compelling circumstance, following the said negotiation, the Metro Railway on **January 12, 2022** published a further gazette notification under **Sub-Section (1) to Section 7** of the **said 1978 Act** to acquire the remaining quantum of land measuring **532.634 sq. mtr.** of the said property **Annexure P-9 at page 83** to the writ petition. On **March 6, 2022** a notification was published in the daily newspaper by the Metro Railway through its competent authority under **Sub-Section (3) to Section 7 of the 1978 Act, Annexure P-10 at page 87** to the writ petition inviting objection from the *persons interested* in the land under the notification within 21 days from the date of notification as provided under the statute.
6. The Respondent No.5, the owner of the property accepted the acquisition and accepted the awarded compensation and left the property.
7. The petitioner no.1 on **March 24, 2022** submitted its objection in **objection case no. JB/01/2022** against the said further acquisition of the remaining area of **532.634 sq. mtr.** of land of the said property, **Annexure P-13 at page 91** to the writ petition. Other petitioners have also filed their objections in the same manner as would be evident from **page 96 to page 100** to the writ petition. The written notes on submissions was also filed by the petitioners in support of their objections, **Annexure P-14 at page 102** to the writ petition.

8. The competent authority then by its impugned order dated **July 1, 2022** , **Annexure P-15 at page105** to the writ petition had rejected the objections submitted by the petitioners.

9. Assailing the said impugned order dated **July 1, 2022** passed by the competent authority the petitioners filed the instant writ petition praying for the following reliefs:

“a) A writ of and/or in the nature of mandamus commanding the Respondents to act in accordance with law;

b) A writ of and/or in the nature of quashing certiorari the notification being S.O.No.847 (E) dated January 12, 2022 published by the Government of India in the Official Gazette which was subsequently published in the Times Of India on 06.03.2022 by the he Competent Authority, Metro Railway.

c) A writ of and/or in the nature of certiorari quashing the orders dated 01.07.2022 passed by the Competent Authority, Metro Railway in Objection Case No.JB/01/2022, Objection Case Objection Case No.JB/02/2022, No.JB/03/2022, Objection Case No. JB/04/2022 and Objection Case No. JB/05/2022.

d) Rule NISI in terms of prayers (a) to (c) above;

e) Ad interim and interim order of injunction restraining the Respondents from taking any step to acquire the 532.634 sq. mts. of land at premises no. 1, National Library Avenue, Kolkata 700027 in furtherance of the notification being S.O.No.847 (E) dated January 12, 2022 published by the Government of India in the Official Gazette which was subsequently published in the Times of India on 06.03.2022 by the Competent Authority, Metro Railway during pendency of the writ petition.

f) And/or To pass such other or further order or orders as to this Hon'ble Court may deem fit and proper”.

10. The writ petition was taken up for consideration from time to time when several orders were passed.

11. Pursuant to the direction made by the coordinate bench the respondent no.2 has filed report and supplementary report in the form of affidavit. The petitioner has filed exception in the form of affidavits thereto. The petitioner has filed supplementary affidavit affirmed on **March 21, 2023** to which the respondent 4 has filed its reply affirmed on **November 23, 2023**. The Metro Railway then filed a bunch of documents to show the steps taken by the Metro Railway in compliance of the statutory provisions. All these are part of the record and this Court has considered all these materials on record.

Submissions:

12. Mr. Gopal Chandra Ghosh, learned senior counsel appearing for the petitioners submits that, the petitioners at all material time are the tenants in respect of a portion of the said property. Since the time **October 09, 2020** Metro Railway proceeded for acquiring **105.326 sq. mtr.** of land from the said property and ultimately the said portion of the property was finally acquired by Metro Railway. The petitioners never objected to, as the same did not affect their tenancy. When at the second stage of acquisition for the balance **532.634 sq. mtr.** of the said property, the notice dated **January 12, 2022** was issued under **Sub-Section (1) to Section 7** of the said **1978 Act** affecting the tenancy right and interest of the petitioners which was followed by another notification dated **March 6, 2022** issued under **Sub-Section (3) to Section 7** of the said **1978 Act**, the petitioners submitted their objections dated **March 24, 2022**. The competent authority by its impugned order dated July 1, 2022 rejected the objection. The principal grounds of objection raised by the petitioners was that the Metro Railway

could have and should have acquired the portion of the property of the CGN where the actual alignment of the Metro Railway track is there. The Metro Railway instead of acquiring the property of the CGN went into a private negotiation and treaty for exchange for the said portion of land of CGN by making over a portion of land from the said property where the petitioners are situated. This according to Mr. Ghosh, learned senior counsel for the petitioners is in clear breach and violation of the provisions relating to acquisition of land under the said 1978 Act.

13. Mr. Gopal Chandra Ghosh further submits that initially when **105.326 sq. mtr.** of land was acquired from the said property for construction of Metro Railway track, the same was for public purpose but when at the second stage **532.634 sq. mtr.** of land was sought to be acquired being the balance portion of the said property for the purpose of exchange of land arising out of a private treaty/negotiation with the CGN, the same can never be construed to be acquisition for public purpose. The reason for acquisition of the said balance **532.634 sq. mtr.** of land from the said property whereupon the petitioners are in uninterrupted, continuous and settle possession for long as tenants, as a result of private negotiation with the CGN to handover the said land to CGN in exchange of the portion of the land utilized from their property is not a public purpose neither within the scope and meaning of **Section 7 of the 1978 Act**. Therefore, the said second stage of acquisition of **532.634 sq. mtr.** of land from the said property is bad in law, illegal, arbitrary and wrongful and as liable to be set aside.

14. Learned senior counsel further submits that, the petitioners indisputably

being tenants at the said property are the persons interested in the land of the property and accordingly the petitioners raised its objections in response to the said notice of acquisition and the objection was rejected by the competent authority principally on the ground that it was found the acquisition was proposed for the utility and the interest of the common people at large and the breach would cause development and scope on further employment and development of nation. The competent authority was of the opinion that the objections of the petitioners were incapable of holding any water and since the objectors/petitioners would be at liberty to file their compensation in the event the land is actually acquired by Metro Railway, the objection was rejected. The competent authority also came to a finding that the owner of the premises had given consent to the acquisition. The objection raised by the petitioners that rest of the property was not acquired for public purpose but as a result of a private treaty/negotiation between the Metro Railway and the CGN was not considered.

15. Learned senior counsel for the petitioners then submits that since the second stage of acquisition for **532.634 sq. mtr.** was not for public purpose and was a result of private negotiation and since the said chunk of land was not at all required for implementation and execution of the Metro Railway track, the exercise undertaken by Metro Railway for the acquisition of the said balance portion of the property was vitiated due to fraud. He submits that when the petitioners being the interested parties on the land are deprived of their land under the cover of public purpose and there is diversification of land for private purpose, it amounts to fraudulent exercise of power of ***Eminent Domain***.

16. Learned senior counsel further submits that in exercise of its power of Eminent Domain, the State can compulsorily acquire land of the private persons but this proposition cannot be over stretched to legitimize patently illegal and fraudulent exercise undertaken for depriving the land owners of their constitutional right to property with a view to favour a private person. In the instant case, the purpose for acquisition of the said balance portion of the property was a result of private negotiation/treaty which was never mentioned as the purpose of acquisition in the notice issued under **Sub-Section (1) to Section 7** of the Act, instead the said **532.634 sq. mtr.** which was otherwise a fraudulent acquisition stands vitiated and is liable to be set aside. In support Mr. Ghosh, learned senior advocate for the petitioners has relied upon a decision of the Hon'ble Supreme Court ***In the matter of: Royal Orchid Hotels Limited and Another vs. G. Jayarama Reddy and Others, reported at (2011) 10 SCC 608.***
17. Mr. Jayanta Kumar Mitra, learned senior counsel along with Mr. Ajoy Krishna Chatterjee, learned senior counsel appearing for respondent no. 3 and 4 referring to Section 6 of the said 1978 Act submits that where it appears to Metro Railway Administration that for the construction of any Metro Railway or any other work **connected** to that, the Metro Railway authority through its competent authority under the statute can prescribe the relevant land for acquisition in due process of law. Once such a decision is taken and approved by the Central Government after being satisfied with the project that the project is meant for public purpose, relevant notifications are published under Section 7 of the 1978 Act by the competent authority. Mr. Mitra submits that while construing a notification

issued under **Sub-Section (1) to Section 7** of the 1978 Act both Sections 6 and 7 should be harmoniously read in conjunction. On a Harmonious reading of the said two sections, it is clear that not only for the purpose of construction of any Metro Railway but also for any other work **connected** therewith, a land can necessarily be acquired. Mr. Mitra submits that, the conjoint reading of the said two provisions would not place both the expressions construction of any Metro Railway and any other work connected therewith in isolation. It is not necessary that when a land is proposed to be acquired under Sections 6 and 7 of the 1978 Act, it should be only for construction of Metro Railway or for laying down its tract but may be the land is required for any other work **connected** therewith.

18. Learned senior counsel for Metro Railway then referring to the track alignment drawing of Metro Railway, **Annexure R-3 at page 21** to the supplementary report filed in the form of affidavit, as already referred to above. Submits that, at the first stage of acquisition of land it was found that a portion of the CGN land was required to maintain the proper alignment drawing of the Metro Railway but since the CGN raised its serious objection on the ground of its security negotiation took place. Metro Railway was compelled to enter into such negotiation for successful completion of laying down the Metro Railway track through a portion of the land of CGN for the greater public purpose. In such negotiation CGN agreed to allow Metro Railway to proceed with their work through the portion of the CGN land provided in exchange and in lieu thereof an agreed portion of land is handed over to them which is immediately adjacent to the said CGN property. Mr. Mitra submits that the Metro Railway then proceeded for the

said second stage of acquisition to acquire the said remaining **532.634 sq. mtr.** so that the said land could be made over to the CGN under the negotiation to enable Metro Railway project to be proceeded with through the portion of the land of the CGN. Therefore, the said balance portion of the said property was acquired for the work connected with the Metro Railway construction and in relation therewith. He further submits that it was an integrated project which had required the acquisition of the balance land of the said property and transfer of lands away from main alignment of the road. He submits that, the expression "**connected therewith**" has the widest import and amplitude. The said expression, therefore, should be understood in the expansive sense. Since it was connected with the Metro Railway project, there was no question of charactering it as unconnected with the public purpose. In support Mr. Mitra has relied upon the following three judgments of the Hon'ble Apex Court:

i.) In the matter of: Renusagar Power Co. Ltd. vs. General Electric Company & Anr., reported at (1984) 4 SCC 679.

ii.) In the matter of: Giriraj Garg vs. Coal India Ltd. & Ors., reported at (2019) 5 SCC 192.

iii.) In the matter of: State of Karnataka & Anr. vs. All India Manufacturers Organization & Ors., reported at (2006) 4 SCC 683.

19. Referring to **Article 31A** of the Constitution of India, Mr. Jayanta Kumar Mitra, learned senior counsel submits that, the said article saves the laws providing for acquisition of estates unless a land is taken over by anybody or acquired by the State **without** following the due process of law. Such taking

over a land is undoubtedly illegal and wrongful, but when a land is acquired under exercise of provisions of statute duly assented by the president of the country or the governor of the State, as the case may be, the acquisition cannot be questioned as violative to Articles 14, 19 or 300A of the Constitution of India. In the instant case, the land was sought to be acquired in exercise of power under the said 1978 Act which is a Central Act in force. He submits that in the instant case the plea of violation of the Constitutional provisions insofar as the right and interest of the petitioners are concerned cannot sustain in law, as 1978 Act is in consonance with Article 31A of the Constitution of India.

20. To explain the expression ***Eminent Domain*** learned senior advocate Mr. Mitra submits that, it is a right inherent in every sovereign to take private property belonging to individual citizens for public use without owner's consent. The limitation imposed upon acquisition or taking possession of private property which is implied under Article 31A of the Constitution of India, shows that such taking over of property must be for public purpose. The other condition is that no property can be taken, unless the law which authorizes such expropriation contains a provision for payment of compensation in accordance with law. In support, Mr. Mitra has relied upon the decision ***In the matter of: Jilubhai Nanbhai Khachar & Ors. vs. State of Gujrat & Anr., reported at 1995 Supp (1) SCC 596.***
21. Learned senior counsel for the petitioners then submits that, the question, therefore, to determine whether the notification for acquisition is vague and the public purpose mentioned therein is liable to be quashed on that ground is to be looked into. If the purpose for which the land is being acquired by

the State within the legislative competence of the State, the declaration of the Government will be final subject, however, to one exception. The exception is that if there is a colourable exercise of power, the declaration will be open to challenge at the instance of the aggrieved party. If it appears that what the government is satisfied about is not a public purpose but a private purpose or no purpose at all, the action of the government would be colourable as not been relatable to the power conferred upon it by the act and its declaration will be a nullity. Subject to this exception the declaration of the government will be final. In the instant case, from the relevant notifications issued under **Sub-Section 1 to Section 7** of the 1978 Act it appears that that purpose is clearly mentioned for construction of Metro Railway works which is admittedly a public purpose. Reading the provisions laid down under Section 6 to the 1978 Act in conjunction with Section 7 of the Act, learned senior advocate submits that, the balance portion of the said property measuring about **532.634 sq. mtr.** was proposed to be acquired at the second stage in connection with the Metro Railway construction. Had there been no negotiation with the CGN for exchange of land, the Metro Railway construction which was for a greater public purpose would have been stopped as the proper track alignment could not be made available in terms of the technical drawing. He further submits that petitioners as an interested persons on the subject land, if are eligible to receive compensation in accordance with law, they will be paid accordingly. The landlord of the said property has already received compensation to its fullest satisfaction and without any objection or demur. It is, therefore, cannot be alleged that the said second stage of acquisition for the balance

land of the said property was in colourable exercise of power of the sovereign for compliance of merely a private arrangement. Had this property not been acquired the Metro Railway construction could not have been completed. In support Mr. Mitra has relied upon a judgment of the Hon'ble Supreme Court ***In the matter of: Bajirao T. Kote (Dead) by LRS. & Anr. vs State of Maharashtra & Ors., reported at (1995) 2 SCC 442.***

22. Mr. Jayanta Kumar Mitra, learned senior advocate then refers to the relevant provisions from **The Diplomatic Relations (Vienna Convention) Act, 1972** (for short, The Vienna Convention). Referring to Section 2 to the said Vienna Convention he submits that the same has the force of law in the country. Referring to Section 8 thereof he submits that restrictions are laid down on entry into diplomatic premises. The property where the CGN is situated is a diplomatic premises. No public servant or agent of the Central Government, a State Government or any Public Authority shall enter the premises of a diplomatic mission for the purpose of serving legal process, **except with the consent** of the head of the mission. Such consent may be obtained through Ministry of External Affairs of the Government of India **Article 22** within the schedule of the Vienna Convention provides that the premises of the mission shall be inviolable. The agents of the receiving state may not enter except with the consent of the head of the mission. Since CGN objected to the utilization of the portion of their premises for construction of Metro Railway track as the said portion of land was included in the alignment drawing, the Ministry of External Affairs was compelled to enter into negotiation with them and to arrive at a solution so that after acquiring the said **532.634 sq. mtr.** of land of the said property and by making over

the same to CGN only the project could be implemented for public purpose at large. Therefore, the acquisition of the said **532.634 sq. mtr.** of land from the said property was essentially required and the same was connected with the construction of Metro Railway.

23. In the light of the above Mr. Mitra, learned senior advocate submits that this writ petition is liable to be dismissed as being devoid of any merit.
24. Mr. Sakya Sen, learned senior counsel appearing for respondent no.2 has adopted the submissions made on behalf of the respondent nos. 3 and 4. In addition he submits that since the owner of the property has been satisfied with the acquisition and received the due compensation without any objection, the petitioners being the alleged tenants cannot claim any right higher than that of the owner. He submits that the petitioners cannot challenge the acquisition proceeding when the landlord himself has accepted the award and received the compensation. In support, he has relied upon a decision of the Hon'ble Supreme Court ***In the matter of: Municipal Corporation of Greater Bombay vs. Industrial Development Investment Company Private Limited & Ors., reported at (1996) 11 SCC 501.***
25. Mr. Sen submits that the writ petition is devoid of any merit and should be dismissed.
26. Mr. Amit Kumar Pan, learned counsel appearing for the added respondent landlord being respondent no.5 submits that his client has accepted the compensation and left the premises. The landlord has no grievance against the acquisition.
27. Mr. Amit Kumar Pan, learned counsel adopts the submissions made on behalf of the Metro Railway Authority and in addition referring to the said

Vienna Convention submits that the premises where CGN is situated, the Government of India has no right over the same. The Union Government or State Government cannot acquire any land which belongs to a diplomatic mission. Even to secure an entry in such premises, prior consent is required to be obtained by the Ministry of External Affairs from that country whose diplomatic mission is in the premises. From the record it appears that no consent was given by the Nepal Government and on the contrary they objected the interference with the premises. In such circumstance the balance portion of the said property was acquired and the respondent no.5 having agreed thereto accepted the compensation.

28. He also submits that this writ petition is otherwise devoid of any merit and should be dismissed.
29. Mr. Gopal Chandra Ghosh, learned senior counsel, in reply, at the outset submits that, the Vienna Convention, 1972 relied upon on behalf of respondent no. 3 and 4 is a subsequent law. He submits that, prior thereto there was Vienna Convention Act, 1963. **Clause 4 to Article 31** to the said 1963 Vienna Convention provided that, the Consular Premises, their furnishings, the property of the Consular post and its means of transport shall be immune from any form of requisition for purposes of national defense or public utility. If expropriation is necessary for such purposes, all possible steps shall be taken to avoid impeding the performance of consular functions, and prompt, adequate and effective compensation shall be paid to the sending State. He submits that in 1977 which is after 1972 the said 1963 Vienna Convention was adopted by the Union of India by way of notification. He then submits that by virtue of operation of said **Clause 4 of**

Article 31 to 1963 Vienna Convention, which has been adopted by the Union of India the land of the CGN ought to have been acquired for the Metro Railway project by paying adequate and proper compensation instead of acquiring the portion of land from the said p[roperty, where petitioners are the tenant. He further submits that petitioners are carrying out their livelihood from the shops and office established on the said property. Hence, it is the obligation of the State to arrange for an identical land in the alternative to enable the petitioners to carry out their livelihood. In support, learned counsel for the petitioner has also place reliance upon a decision of the Bombay High Court ***In the matter of: Earth Builders, Bombay vs. State of Maharastra & Ors., reported at AIR AIR 1997 Bom 148.***

30. To distinguish the judgments relied upon by Mr. Jayanta Kumar Mitra, Senior Counsel as referred to above, learned senior counsel for the petitioners submits that, the main distinguishing feature is in the facts of the instant case the land of the petitioners was not acquired for public purpose but was acquired forcefully and in a fraudulent manner for the purpose of exchange of land in lieu of the land taken from CGN under a private negotiation. Such purpose for acquiring the land of the petitioners was never disclosed either in the notices issued under Section 7 of the 1978 Act nor before the petitioners despite repeated demands by the petitioners. Thus, the acquisition is fraudulent and should be set aside. In the cases relied upon on behalf of the Metro Railways the purpose for acquisition was for public purpose and the notifications for acquisition clearly spelt out that for the specified public purpose the lands were acquired. To distinguish the judgment ***In the matter: Industrial Development Investment Co. Pvt.***

Ltd. (supra) relied upon by Mr. Sakya Sen appearing for respondent no.2, Mr. Ghosh submits that the respondent no.5 in the instant case as the owner of the property had acted fraudulently. While disclosing the actual status of the property before the Metro Railway,. Respondent no.5 suppressed the existence of tenancy of the petitioners at the said property.

Decision:

31. After considering the rival contentions of the parties and upon perusal of the materials on record, at the threshold it appears that, the facts regarding the publication of the notifications for acquisition of the said property at two stages, submission of objection by the petitioners at the second stage of acquisition of the remaining portion of the said property and the rejection thereof which is impugned in this writ petition, are admitted.
32. On a meaningful and harmonious reading of the provisions of the said 1978 Act and the harmonious construction thereof, this Court is of the view that the said Act and the provisions for acquisition of land therein are self-contained code. The provisions provide for both rights and remedies. **Chapter III** of 1978 Act deals with the acquisition of land for carrying out construction of any Metro Railway or any other work **connected** therewith, as specifically provided under **Section 6** of the Act. **Section 7** of the Act provides for publication of notification for acquisition on receipt of an application under Section 6 of the Act. **Section 8** provides for survey of the relevant land. **Section 9** of the Act gives right to any person interested in the land to raise their objections against acquisition. **Section 10** provides for declaration of acquisition. **Section 11** of the act provides the power to take possession of the acquired land. **Section 13 and 14** of the 1978 Act

provides for determination of compensation amount, deposit and payment thereof. Other connected and consequential provisions are also there under the 1978 Act.

33. The admitted position is at the stage when notice was published on October 9, 2020 for acquisition of **105.326 sq. mtr.** of land of the said property, the petitioners were not aggrieved and they chose not to object to the said acquisition as they did not file any objection. The first stage of acquisition process achieved its finality with the declaration of acquisition published on October 11, 2021 under Section 10 of 1978 Act.
34. The alignment drawing of Metro Railway makes it evident that the portion of the land of CGN was an inevitable requirement to maintain technical alignment of Metro Railway track in accordance with the alignment drawing.
35. The Vienna Convention Act of 1972 which has the force of law in India, inter alia, specifies immunities to CGN insofar as its said land and premises is concerned.
36. Section 8 of the said Vienna Convention Act, 1972 reads as under:

“8. Restrictions on entry into diplomatic premises- No public servant or agent of the Central Government, a State Government or any public authority shall enter the premises of a diplomatic mission for the purpose of serving legal process, except with the consent of the head of the mission. Such consent may be obtained through the Ministry of External Affairs of the Government of India”.
37. Section 8 of the Vienna Convention Act, 1972 imposes a clear bar on any public servant or agent of the Central Government, a State Government or any public authority from entering the premises of the CGN for the purpose of serving legal process, **except with the consent** of the head of the mission. Such consent may be obtained through the Ministry of External

Affairs of the Government of India. When the expression **“consent”** is used in the provisions of law, it is an open ended expression, either consent may be granted or refused. It cannot create any right on the part of the central government or a state government. The head of the mission of a diplomatic mission at his **discretion** either may grant or may not grant consent. When such consent is refused, the same is not amenable to any challenge. Such consent cannot be enforced by the Central or State Government or in law. In the facts of this case, CGN initially did not agree and accord its consent to utilize their land. Upon prolong negotiation held with the Ministry of External Affairs, Union of India, CGN agreed that metro railway can utilize their portion of land which is within the alignment drawing provided there shall be an exchange of land from the said property. Therefore, CGN clearly refused its consent under **Section 8** of the **Vienna Convention Act, 1972**. The particular stretch where the dispute arose through this writ petition, if was not allowed to be utilized by the CGN from their portion of land, the entire stretch of Metro Railway in between Joka to B.B.D. Bag would have been affected and the public purpose would be irreparably defeated. In such circumstance, the Ministry of External Affairs was compelled to enter into a private arrangement/negotiation with the CGN and agreed for the exchange of land.

38. The expression **“connected therewith”** used in **Section 6** of the 1978 Act has to be construed and accepted with a wide import. The expression must be taken as an exhaustive one with widest amplitude, to give the true and proper construction and understanding of the provisions laid down under **Section 6** of the Act. The expression must be understood and read in its

expansive sense. ***In the matter of: Giriraj Garg vs. Coal India Ltd. &***

Ors. (supra) the Hon'ble Supreme Court had observed as under:

"7.2. In Renusagar Power Co. Ltd. v. General Electric Co. this Court observed that expressions such as "arising out of", or "in respect of", or "in connection with", or "in relation to", the contract are of the widest amplitude, and content. In Doypack Systems (P) Ltd. v. Union of India this Court observed that expressions such as - "pertaining to", "in relation to" and "arising out of", are used in the expansive sense, and must be construed accordingly."

39. The proper interpretation and construction of **Section 6** has to be accepted that the power to acquire the land under this provision of the Act is vast and whenever the Metro Railway Administration is of the opinion that for the **'construction of any Metro Railway or any other work connected therewith'**, any land is required, the Central Government after being satisfied on the requirement for public purpose shall issue notification under **Section 7** of the 1978 Act. In the facts of this case, to maintain the track alignment of Metro Railway had the land of the CGN not being utilized, it would not have been possible for the metro railway administration to execute the work which is for the public purpose at large. Accordingly, this compelling circumstance, since there was a statutory restriction to utilize the land of CGN, Ministry of External Affairs was compelled to negotiate with the CGN to complete and implement the project in lieu of the land of the said property and notification was issued under **Section 7** of 1978 Act, on **January 12, 2022** in respect of the said **532.634 sq. mtr.** of land. The said land was acquired for the purpose **connected** with the construction of the Metro Railway.

40. Respondent no.5, the owner of the land accepted the acquisition by receiving the due compensation. The expression used **“any person interested in the land”** under **Section 9** of 1978 Act has also to be understood and construed in a wide amplitude. Any person interested in the land not only includes the owner of the land but also includes the existing tenants there at. **Sub-Section (2) to Section 13** of the 1978 Act, inter alia, provides that **‘any other person whose right of enjoyment in any land, building has been affected’** by reason of acquisition, compensation has to be paid in the manner and mode mentioned in the statute. This expressions shall also be understood with a wide amplitude and shall include the existing tenants who enjoys a right of tenancy on the land and at the building acquired. The petitioners as tenants of the said premises, shall be eligible to receive due compensation payable to them strictly in accordance with law.

41. **In the matter of: Jilubhai Nanbhai Khachar & Ors. (supra)** the Hon’ble Supreme Court had observed as under:

“30. Thus it is clear that right to property under Article 300-A is not a basic feature or structure of the Constitution. It is only a constitutional right. The Amendment Act having had the protective umbrella of Ninth Schedule habitat under Article 31-B, its invalidity is immuned from attack by operation of Article 31-A. Even otherwise it would fall under Articles 39(b) and (c) as contended by the appellants. It is saved by Article 31-C. Though in the first Minerva Mills case, per majority, Article 14 was held to be a basic structure, the afore- referred and other preceding and subsequent to the first Minerva Mills case consistently held that Article 14 is not a basic structure. Article 14 of the Constitution in the context of right to property is not a basic feature or basic structure. The Constitution 66th Amendment Act, 1990 bringing the Amendment Act 8 of 1982 under Ninth Schedule to the Constitution does not destroy the basic structure of the Constitution.

31. Even agreeing with the contention that after the Constitution Forty- fourth Amendment Act, 1978, which had

come into force from 19-6-1979, the right to property engrafted in Chapter IV, Part 17, namely Article 300-A that the appellants are entitled to its protection, whether Section 69-A is unconstitutional? The heading "Right to Property" with marginal note reads thus:

"300-A. Persons not to be deprived of property, save by authority of law. No person shall be deprived of his property save by authority of law."

which is restoration of Article 31(1) of the Constitution.

32. *In Subodh Gopal case Patanjali Sastri, C.J., held that the word 'deprived' in clause (1) of Article 31 cannot be narrowly construed. No cut and dry test can be formulated as to whether in a given case the owner is deprived of his property within the meaning of Article 31; each case must be decided as it arises on its own facts. Broadly speaking it may be said that an abridgement would be so substantial as to amount to a deprivation within the meaning of Article 31, if, in effect, it withheld the property from the possession and enjoyment by him or materially reduced its value. S.R. Das, J., as he then was, held that clauses (1) and (2) of Article 31 dealt with the topic of 'eminent domain', the expressions 'taken possession of' or 'acquired' according to clause (2) have the same meaning which the word 'deprived' used in clause (1). In other words, both the clauses are concerned with the deprivation of the property; taking possession of or acquired, used in clause (2) is referable to deprivation of the property in clause (1). Taking possession or acquisition should be in the connotation of the acquisition or requisition of the property for public purpose. Deprivation specifically referable to acquisition or requisition and not for any and every kind of deprivation. In Dwarkadas Shrinivas of Bombay v. Sholapur Spinning and Weaving Co. Ltd. Mahajan, J., as he then was, similarly held that the word 'deprived' in clause (1) of Article 31 and acquisition and taking possession in clause (2) have the same meaning delimiting the field of eminent domain, namely, compulsory acquisition of the property and given protection to private owners against the State action. S.R. Das, J. reiterated his view laid in Subodh Gopal case. Vivian Bose, J. held that the words 'taken possession of' or 'acquired' in Article 31(2) have to be read along with the word 'deprived' in clause (1). Taking possession or acquisition amounts to deprivation within the meaning of clause (1). No hard and fast rule can be laid down. Each case must depend on its own facts. The word 'law' used in Article 300-A must be an Act of Parliament or of State legislature, a rule or statutory order having force of law. The deprivation of the property shall be only by authority of law, be it an Act of*

Parliament or State legislature, but not by executive fiat or an order. Deprivation of property is by acquisition or requisition or taking possession of for a public purpose.

33. *It is true as contended by Shri Jhaveri that clause (2) of Article 31 was not suitably incorporated in Article 300-A but the obligation to pay compensation to the deprived owner of his property was enjoined as an inherent incident of acquisition under law is equally untenable for the following reasons. Ramanatha Aiyar's The Law Lexicon Reprint Edn. 1987, p. 385, defined "eminent domain" thus:*

"The right of the State or the sovereign to its or his own property is absolute while that of the subject or citizen to his property is only paramount. The citizen holds his property subject always to the right of the sovereign to take it for a public purpose. This right is called 'eminent domain'"

At p. 386 it was further stated that:

"The sovereign power vested in the State to take private property for the public use, providing first a just compensation therefor. A superior right to apply private property to public use. A superior right inherent in society, and exercised by the sovereign power, or upon delegation from it, whereby the subject-matter of rights of property may be taken from the owner and appropriated for the general welfare. The right belonging to the society or to the sovereign, of disposing in cases of necessity, and for the public safety, of all the wealth contained in the State is called eminent domain. The right of every Government to appropriate, otherwise than by taxation and its police authority, private property for public use. The ultimate right of sovereign power to appropriate not only the public property but the private property of all citizens within the territorial sovereignty, to public purposes. Eminent domain is in the nature of a compulsory purchase of the property of the citizen for the purpose of applying to the public use." In Black's Law Dictionary, 6th Edn., at p. 523 "eminent domain" is defined as:

"The power to take private property for public use by the State, municipalities, and private persons or corporations authorised to exercise functions of public character.... In the United States, the power of eminent domain is founded in both the Federal (Fifth Amendment) and State Constitutions. The Constitution limits the power to taking for a public purpose and prohibits the exercise of the

power of eminent domain without just compensation to the owners of the property which is taken. The process of exercising the power of eminent domain is commonly referred to as 'condemnation' or 'expropriation'."

34. *The right of eminent domain is the right of the sovereign State, through its regular agencies, to reassert, either temporarily or permanently, its dominion over any portion of the soil of the State including private property without its owner's consent on account of public exigency and for the public good. Eminent domain is the highest and most exact idea of property remaining in the Government, or in the aggregate body of the people in their sovereign capacity. It gives the right to resume possession of the property in the manner directed by the Constitution and the laws of the State, whenever the public interest requires it. The term 'expropriation' is practically synonymous with the term "eminent domain".*

42. ***In the matter of: Bajirao T. Kote (Dead) by LRS. & Anr. (supra)*** the Hon^{ble} Supreme Court had observed as under:

4. *These contentions have been refuted by Shri Ganpule, the learned Senior Counsel for the second respondent-Sansthan. The questions, therefore, are whether the public purpose specified is vague and liable to be quashed on that ground and whether notification published under Section 4(1) of the Act is vitiated by mala fides or colourable exercise of the power. The notification mentions thus:*

"Whereas it appears to the Commissioner, Poona Division that lands specified in the Schedule II hereto are likely to be needed for public purpose, viz., for public trust Saibaba Sansthan, Shirdi. It is hereby notified under the provision of Section 4 of the Land Acquisition Act, 1894 that the said lands are likely to be needed for the purpose specified above."

The question, therefore, is whether this notification is vague and the public purpose mentioned therein is liable to be quashed on that ground. The leading judgment of this Court in this behalf is the ratio laid down in Somavanti v. State of Punjab. The facts therein were that the State of Punjab exercised the power under Section 4(1) and issued the notification followed by the declaration under Section 6 that the land was likely to be needed by the Government for a public

purpose, namely, for the "setting up of a factory" (elaborated later on) for manufacturing various ranges of refrigeration compressors and ancillary equipments. It was contended that the public purpose is colourable exercise of the power and it is no public purpose and that, therefore, the exercise of the power for the benefit of the company is a colourable exercise of the statutory power offending their right to hold the property under Article 19(1)(g) of the Constitution. The Constitution Bench per majority dealing with that question held (at SCR p. 801) that the Act made no attempt to define public purpose in a compendious way. Public purpose is bound to vary with the times and the prevailing conditions in a given locality and, therefore, it would not be a practical proposition even to attempt a comprehensive definition of it. It is because of this that the legislature has left it to the Government to say what is a public purpose and also to declare the need of a given land for a public purpose. At (SCR) p. 804 it was held that whether in a particular case the purpose for which land is needed is a public purpose or not is for the State Government to be satisfied about. If the purpose for which the land is being acquired by the State is within the legislative competence of the State, the declaration of the Government will be final subject, however, to one exception. That exception is that if there is a colourable exercise of power the declaration will be open to challenge at the instance of the aggrieved party. If it appears that what the Government is satisfied about is not a public purpose but a private purpose or no purpose at all, the action of the Government would be colourable as not being relatable to the power conferred upon it by the Act and its declaration will be a nullity. Subject to this exception the declaration of the Government will be final. Therefore, the Constitution Bench upheld the notification when it was mentioned that the Public purpose was for industrial development without any specification".

43. ***In the matter of: State of Karnataka & Anr. (supra)*** relied upon on behalf of the petitioners, the issue was whether the land acquired by the State for a specified purpose could be transferred by the beneficiaries of the land to a private individual and corporate entities. To decide the said issue the Hon'ble Supreme Court observed that, in exercise of its power of

eminent domain the State can compulsorily acquire land of the private persons on this possession cannot over stretch to legitimize a patently illegal and fraudulent exercise undertaken for depriving the land owners of their property, with a view to favour a private persons. In the facts of the instant case, there is no doubt that the said property was acquired to complete the metro railway project and in connection therewith as provided under Section 6 of the 1978 Act. Had this property not been acquired and handedover to CGN in exchange and in lieu of the portion of their land required to be utilized for construction of the metro railway track, the metro railway project would not be implemented. As a result greater public purpose would be defeated irreparably. Thus, the ratio of the judgment shall not apply in the facts of the instant case.

44. ***In the matter of: Earth Builders, Bombay (supra)*** relied on behalf of the petitioners the issue was decided on the basis of the provisions under 1963 Vienna Convention which provided for an adequate and effective compensation can be paid to the sending State but no such provision is there under the Vienna Convention Act, 1972 which governs the instant case. Hence the ratio of the said judgment shall not apply in the facts of the instant case.
45. The CGN enjoys an immunity under the said Vienna Convention Act, 1972. Since, only on the basis of the negotiation held with CGN with a promise made by the Ministry of External Affairs that the land from the said property will be made over to them in exchange of utilized land, of CGN, had CGN not agreed to allow the Metro Railway to utilize their portion of land to maintain the track alignment of the metro railway, there was no other option or

alternative left open to the Central Government and metro railway but for accepting the said negotiation. In the event, the portion of the land within the track alignment of metro railways which belonged to CGN would not have been utilized, the entire project might collapse which was for the greater public purpose. The situation really compelled the Central Government and metro railway to acquire the said **532.634 sq. mtr.** of land at second stage being the remaining part of the said property, where the petitioners were situated. In such circumstance, it cannot be said or construed that, the acquisition of **532.634 sq. mtr.** of land of the property was a fraudulent acquisition or an acquisition in colourable exercise of power by the Central Government or the Metro Railway.

46. **Eminent Domain** refers to the power of State to acquire private property for public purposes following the due process of law and payment of compensation to the property loser. In India, this doctrine is recognized under **Article 31A** of the Constitution of India. Right to Property guaranteed under Article 300A of the Constitution though is a constitutional right but is not absolute. The State can acquire a property for public purpose following the procedure established by law. The authority and power of the State to acquire property for public purpose within its **Eminent Domain** is a reasonable restriction established by law. The three key principles for acquiring a land by the State are public purpose, due process of law and fair compensation to be paid to the land loser.
47. Public purpose is not capable of any precise definition each case has to be considered in the light of the purpose for which acquisition is sought for. It is to serve the general interest of the community as opposed to the

particular interest of the individual. Public purpose broadly speaking would include the purpose in which the general interest of the society at large as opposed to the particular interest of the individual is directly and vitally concerned. Generally the executive would be the best judge to determine whether or not the purpose is a public purpose for the purpose of acquiring a land, yet it is not beyond the purview of the judicial scrutiny. In the instant case, the first notification dated October 9, 2020 published under Sub-Section 1 to Section 7 of the 1978 Act spoke for construction of underground Metro Railway and the second stage notification dated January 12, 2022 published under Sub-Section 1 to Section 7 of the 1978 Act to acquire **532.634 sq. mtr.** of the property also spoke for the same for the same stretch of metro railway track. Thus, the public purpose was unequivocally and clearly spelt out in both these two notifications published at two different stages. The purpose defined therein were the same and there was no deviation whatsoever. It is, therefore, incorrect to allege by the petitioners that, the second stage of acquisition of the said property was not for public purpose related with the construction of metro railway track or the second stage notification dated **January 12, 2022** does not disclose the actual purpose for acquiring the balance portion of the said property. Admittedly, the construction of metro railway track is for greater public purpose and Section 6 of the said 1978 Act permits acquisition of any land for any purpose connected with the metro railway construction. The right guaranteed under Article 300A of the Constitution shall have to be read by including the provisions laid down under Article 31A of the Constitution of India and not in exclusion thereof. The sovereign power vested in the State

to take private property for public use stands concluded with payment of just compensation to the land looser. A superior right to apply private property for public use. A superior right inherent in society and exercised by the sovereign power or upon delegation from it, whereby the subject matter of rights of property may be taken from the owner and appropriated for the general welfare of the society for a public purpose. The right belonging to the society or to the sovereign, of disposing in cases of necessity, and for the public safety of all the wealth contained in the State is called **Eminent Domain**. Eminent Domain is in the compulsory purchase of the private property of a citizen for the purpose for applying it for public use. The expression **property** used under Article 300A of the Constitution, must also, therefore, be, understood in the context in which the sovereign power of **Eminent Domain** is exercised by the State and property is expropriated.

48. As already discussed herein above, as tenants the petitioners are persons interested in the said property under the provisions of the said 1978 Act and for their private interest, the larger public purpose for construction of Metro Railway track cannot suffer. The petitioners are eligible to receive just and appropriate compensation payable strictly in accordance with law in lieu of their interest in the property.
49. Thus, the impugned order dated **July 01, 2022** is not interfered with and stands **affirmed**.
50. In view of the foregoing reasons and discussions this Court is of the firm and considered opinion that this writ petition is totally devoid of any merit. Accordingly this writ petition **WPA 20081 of 2022** stands **dismissed** without any order as to costs. Interim order, if any, stands vacated.

51. However, the Metro Railway through its appropriate authority upon issuing a prior notice of hearing at least seven days to the petitioners and after granting them an opportunity of hearing shall determine the just and appropriate compensation payable to the petitioners strictly in accordance with law. Such determination shall be carried out and completed by the competent authority positively within a period of **eight weeks** from the date of communication of this judgment and order.
52. The competent authority then shall pay the compensation, to the petitioners positively within a period of **ten weeks** from the date of determination of such compensation.
53. In the event, the petitioners are aggrieved with the determination of compensation, they shall be at liberty to challenge the same following the due process of law before the jurisdictional authority.
54. It is made clear that the petitioners shall vacate the property positively within a period of **six weeks** from date.
55. In the event, petitioners fail to vacate the property within the said period of **six weeks**, the Metro Railway authority shall be at liberty to take steps in accordance with law to have the property vacated and to take possession thereof immediately upon expiry of the said time period of **six weeks**. In such case the local police authority shall render all necessary assistance to the metro railway authority to have the property vacated to enable the Metro Railway to take possession of the same, if such an assistance is sought for.

(Aniruddha Roy, J.)