

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

APO No. 207 of 2023

With

WPO No. 2289 of 2022

(Old Case No. APOT 419 of 2023)

The Kolkata Municipal Corporation

Vs.

Rameshwar Properties Private Limited & Ors.

And

APO No. 208 of 2023

With

WPO No. 2380 of 2022

(Old Case No. APOT 418 of 2023)

The Kolkata Municipal Corporation

Vs.

Rameshwar Properties Private Limited & Ors.

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Apurba Sinha Ray

For the Appellant/KMC

Mr. Alak Kumar Ghosh, Adv.
Mr. Swapan Kumar Debnath, Adv.
Mr. Gopal Chandra Das, Adv

For the Respondents

Mr. Suddhasatva Banerjee, Adv.
Mr. Pushan Kar, Adv.
Mr. Soumabho Ghose, Adv.
Mr. Sagnik Majumdar, Adv.
Ms. Shreya Ghosh Dastidar, Adv.

For the State

Mr. T.M. Siddiqui, Adv.
Mr. S. Dhar, Adv.
Mr. Mrinal Kanti Ghosh, Adv.

CAV On

10.04.2024

Judgment On

11.07.2024

Apurba Sinha Ray, J. :-

1. These two appeals are directed against a judgment and order dated October 3, 2023, whereby two writ petitions were disposed of by a learned Judge of this Court. One was the writ petition of Kolkata Municipal Corporation (in short 'KMC') being W.P.O. 2289 of 2022. In this writ petition KMC had challenged the enhancement of quantum of rent as compensation assessed by the First Land Acquisition Collector. The other writ petition was that of Rameshwar Properties Pvt. Ltd being W.P.O. 2380 of 2022. Rameshwar Properties had challenged a letter dated July 19, 2022, issued by the Land Acquisition Collector proposing a fresh inspection of Premises No. 42, Ripon Street, Kolkata, of which Rameshwar Properties was the owner and which had been requisitioned by the Government and occupied by KMC for a substantial period of time. Since two writ petitions were disposed of by a common judgment and order, KMC has filed two appeals.

2. Shorn of all unnecessary details, the Learned Single Judge has very precisely narrated the factual issues relating to the dispute at page nos. 10 to 12 of the impugned Judgment, which are reproduced herein below:-

“The cases have a chequered history. Rameshwar Properties is admittedly the owner of the premises in question, being 42, Ripon

Street, Kolkata. The premises was initially requisitioned under Rule 75A of the Defence of India Rules framed under section 2(5) of the Defence of India Act, 1939 and thereafter under section 3(1) of the Act of 1947. The petitioner filed a writ petition being W.P. No. 2057 of 1997 against the order of requisition and during pendency of the writ petition, the State Government published a notice under section 4 of the Land Acquisition Act, 1894 stating that the premises was required for public purpose. Since no award was declared in terms of section 11A of the Act of 1894, Rameshwar Properties moved a writ petition being 1605 of 2003 which was disposed of by this Court on 26th June, 2012 directing the State to deliver possession of the property in favour of Rameshwar Properties. The Court further directed the Land Acquisition Collector, Kolkata to determine and pay, if not already determined and paid, rent for the period the property was under requisition and occupation charge from January 20, 2000 till the date of delivery of possession. Without handing over possession of the premises in compliance with the order of the Court, the first Land Acquisition Collector, Kolkata issued a fresh notification under section 4 of the Act of 1894 on December 23, 2013. The order dated June 26, 2012 was carried in appeal by the KMC and by an order passed on 25th March, 2015 in A.P.O. No. 230 of 2014, the Hon'ble Division Bench opined that provision of the new Act would apply to determination of compensation and till passing of award, provisions of the 1894 Act would apply. In view of fresh acquisition proceedings being initiated, the Court did not direct handing over possession of the property to the owner. In

the said appeal, the then Learned Advocate General informed the Court that the amount payable as rent up to a day prior to declaration under section 4 under occupation charges from 20 January, 2000 to 22nd December, 2013 be determined by the Collector and paid within two months from date. The calculation made by the LA Collector was held to be inappropriate by an Hon'ble Division Bench of this Court in an order passed on January 28, 2020 in A.P.O. No. 181 of 2016. The Hon'ble Division Bench directed determination of occupation charges within a stipulated time frame. It shall be useful to reproduce the operative portion of the order.

"APO No. 181 of 2016 and GA No. 1872 of 2016 are allowed by directing the concerned LA Collector to undertake the exercise of determining the occupation charges at premises no. 42, Ripon Street, Kolkata for the period January 20, 2000 to December 15, 2013 in accordance with law and upon due notice to both the appellant herein and the Kolkata Municipal Corporation. Such exercise should be completed by the relevant Collector within a period of three months from date. In the event the appellant is found entitled to any further payment, such payment should be discharged by the Corporation within a further period of three months therefrom, subject to the parties' rights to challenge the Collector's assessment in accordance with law."

- 3.** The Learned Single Judge's decision rests on several points.

- i) The final memo dated 12th August, 2021 issued by the First LA Collector was on the basis of memos dated 29th December, 2020, 29th June, 2021 and 9th August, 2021 of the department concerned.
- ii) The said memos dated 29th December, 2020, 29th June, 2021 and 9th August, 2021 being inter-departmental communications cannot be subject matter of challenge at the instance of the corporation on the ground that the said memos were not issued and published by the Government of West Bengal in accordance with law.
- iii) The challenge of corporation can only be limited to the final order dated 12th August, 2021, being published and issued as final memo.
- iv) The contention of the corporation to the effect that since the LA Collector was entrusted by the Hon'ble Division Bench to undertake the exercise of determining the occupation charges himself, the assistance taken by him from Land and Land Reforms and Refugee Relief and Rehabilitation Department is beyond his authority, was turned down by the Learned Single Judge on the grounds, inter alia, that the Hon'ble Division Bench has not restricted the Collector from getting assessment vetted and authenticated by his Superior Authority, and such vetting and authentication by the Superior

Authority at the request of the Collector is in accordance with the Protocol of the Department.

v) The entire process of reassessment made by the Collector was upon hearing representatives of the parties and also on consideration of all relevant Government orders and rents of at least three comparable premises visa-vis the premises in question. The corporation did not provide any rate of rent in support of its claim. After making the assessment, the First LA Collector sent such assessment to the Superior Authority for vetting and authentication as per protocol of the department and thereby complied with the relevant order of the Hon'ble Division Bench. The decision making process cannot be called in question merely on the ground that the amount was recalculated on the basis of the formula provided by the department.

vi) The Collector's letter dated 19th July, 2022, proposing a fresh inspection of premises No. 42, Ripon Street, Kolkata for determining the actual rentable area of structures as well as the vacant land and for correction of some errors in calculation of occupation charges, was revoked by the learned Single Judge on the ground, inter alia, that all the documents pertaining to the plot in question including documents of acquisition demonstrate that the plot comprises of 7031 sq.ft., and

therefore, there cannot be any doubt or dilemma in respect of the area of the plot and undertaking further measurement shall be a futile exercise.

4. Ultimately, the Learned Single Judge disposed of the two writ petitions in the following manner:-

“In the light of the discussion made hereinabove, it is held that the memo dated 12th August, 2021 does not suffer from any illegality/irregularity which calls for interference by this Court.

Accordingly, W.P.O. 2289 of 2022 is dismissed. W.P.O. 2380 of 2022 is allowed.

I.A no. GA 2 of 2023 is also disposed of.

The letter issued by the first Land Acquisition Collector on 19th July, 2022 is set aside/quashed.

The KMC is directed to pay occupation charges in respect of the premises in question for the period January 20, 2000 to December 15, 2013 to Rameshwar Properties Private Limited, the petitioner in the second writ petition, to the tune of Rs. 88,11,735/- (Rs. 1,62,43,175/- Rs. 74,31,440/- already paid), within two months from the date of judgment.

Before winding up, this Court records that since Rameshwar Properties has accepted the final assessment made by the first LA Collector and has not made any submission to substantiate its claim of minimum occupation charges to be at least Rs. 40 per sq.ft, the

Court dissuades from making any comment thereon.

However, this observation shall not preclude the Company from claiming enhancement of occupation charges in future, if so advised.

There shall however be no order as to costs.

Since no affidavit is invited, the allegations contained in the writ petitions are deemed not to be admitted.”

Submission from the Bar

5. Mr. Ghosh, learned Senior Advocate, appearing for the Corporation has challenged the decision making process regarding calculation and assessment of rent. The First LA Collector failed to act independently as he borrowed the views of the Land Reforms Commissioner. In fact the First LA Collector was dictated to enhance the rent as initially calculated at Rs. 1,18,52,059/- to Rs. 1,62,43,175/-. Further, there was no scope for the First LA Collector to get the assessment of rent authenticated and vetted through the Land Reforms Commissioner. There was no reason ascribed for such undue enhancement. Not the Land Reforms Commissioner but the LA Collector was the appropriate authority under Section 14A of the West

Bengal Premises Requisition and Control (Temporary Provision) Act, 1947.

6. According to learned Senior Advocate for the Corporation, all the findings and observations of the Learned Single Judge are absolutely misconceived. The letter dated 12th August, 2021 does not disclose any reason in support of the amount of Rs. 1,62,43,175/- and therefore the same cannot be said to be a document disclosing the process, method and calculation as directed by the Hon'ble Division Bench. The other letters under challenge had been disclosed and published and as such those documents do not simply stand as internal communications particularly when those documents disclose the instructions, formula for calculation of the amount of rent.

7. In the instant case, the issue is of increasing the rent compensation in accordance with law but not for fixation of rent since the rent had earlier been fixed. The First LA Collector ought to have followed the provisions of the said Act, 1947 for determination of occupation charges or rent by way of enhancement.

8. The First LA Collector, according to Mr. Ghosh, has specified the reasons in the letter dated 19th July, 2022 in support of his decision to revisit the issue of determination of actual rentable area and

calculation of occupation charges thereof. If the authority detects some error in the calculation of occupation charges and also in determining the actual rentable area of structures as well as vacant land the same cannot be faltered. The errors/mistakes can always be corrected and there is enough scope to make administrative review of the decision. Physical verification of rentable area and vacant land should have been made by the First LA Collector even though some of the documents show the measurement as 7031 sq.ft. Therefore, the First LA Collector rightly issued the letter dated 19th July, 2022.

9. It is submitted that if the letter/notice of joint inspection dated 19th July, 2022 stands the writ petition of the K.M.C. succeeds automatically and as a consequence thereof the second writ petition fails. If the result is otherwise or vice versa then the Writ Petition of the K.M.C. ought to have been adjudicated on merit after inviting affidavits. But the writ petition of the K.M.C. had not been adjudicated on merit particularly upon consideration of reasons mentioned in paragraphs 11(a) to 11(i) of the Writ Petition.

Judgments relied on

1) (2008) 11 SCC 591 (Videsh Sanchar Nigam Ltd. & Anr. –Vs.- Ajit Kumar Kar & Ors.)

2) (2008) 2 SCC 750 (Union of India & Anr. –Vs.- Narendra Singh)

The judgments relied on by the Company are not applicable in the back ground of the facts and circumstances as above particularly when the action/decision which has been challenged in the writ petition cannot be said to be ministerial act since the basis, method and/or process for determination of rent has been questioned here. Moreover, in the instant case the Kolkata Municipal Corporation was not in occupation without making payment of rent, particularly when the issue under the direction of the Hon'ble Court is for fresh assessment of rent in accordance with law.

10. Learned counsel, Mr. Suddhasatva Banerjee, appearing for the respondents has submitted that in WPO No. 2289 of 2022, the Corporation has challenged the quantum of occupation charges on the ground that the sum of Rs. 1,18,52,059/- is wrongful since the three properties which have been taken into consideration for such determination are located in the business area or commercial area whereas the subject property is located in a congested slum area and secondly for determination of rent, the area of 7031 sq.ft. ought not to have been the basis for determination of occupation charges. To counter such submission of the Corporation, Mr. Banerjee the learned counsel of the respondent company, has pointed out that by virtue of order dated 28.01.2020 of the Hon'ble Division Bench, the First Land Acquisition Collector has determined the occupation charges as

payable after taking into consideration the facts that rates of rents of the two properties as suggested by the respondent company whereas the Corporation did not provide any rate of rent in support of its claim. Rent of three comparable premises, viz., a) 32A, Brabourne Road, Kolkata – 700 001 b) 8B, Lindsey Street, Kolkata c) 31, Chowringhee Road, Kolkata have been considered. The location of all these properties and the fact that they were requisitioned/ hired for public purposes were also taken into consideration. The rates of rent of the three properties as fixed in the year 2000 were taken into consideration, for preparing a detailed calculation in respect of monthly rate, the area, the period and the amount.

11. Learned counsel has further argued that in view of the above, the writ petitioners are precluded from invoking the jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India to examine the method and manner of assessment for computation of occupation charges. The court in exercise of its jurisdiction under Article 226 of the Constitution of India, the learned counsel Mr. Banerjee argues, cannot be called upon to enter into such investigation of facts which requires production of evidence by the parties for the purpose of determining the actual amount of compensation. In this regard learned counsel has referred to the decisions reported in **MANU/WB/0303/96, (paras 6 and 7) (Nathmal**

Girdharilall Steels Ltd. Vs. Commissioner of Customs), (2005) 12 SCC 725 (paras 7 to 9) (Orissa Agro Industries Corporation Ltd. & Ors. Vs. Bharati Industries & Ors.) and (1999) 7 SCC 298 (paras 6 and 7) (Chairman Grid Corporation of Orissa Ltd. (Gridco) & Ors. Vs. Smt. Sukamani Das & Anr. Etc.) in support of his contention.

12. Mr. Banerjee also referred to the decision reported at **AIR 2016 Calcutta 236 (paras 38 to 40) (West Bengal Housing Infrastructure Development Corporation Vs. M/s. Impression)** to counter the Corporation's submission that the First Land Acquisition Collector is persona designata in view of the order dated 28.01.2020 passed by the Division Bench of this Court and therefore could not have sought the approval of his higher authority for the assessment of Rs. 1,62,43,175/-.

13. Learned counsel argued that calculation primarily means to compute mathematically, whereas determination is a process of adjudication upon relevant materials based on which the effective opinion is expressed. The determination in this case has been made by the First Land Acquisition Collector. It is only the calculation that was made on the basis of formula. By order dated 28.01.2020 the Division Bench also required the First Land Acquisition Collector to undertake

the process of determination in accordance with law. Government orders are binding on its officers. Non adherence to government circular/notification is malice in law which needs neither any averment nor strict proof. Such an order would be illegal and wholly unsustainable as per the decision reported at **(2009) 13 SCC 758 (para 18) (Swaran Singh Chand Vs. Punjab State Electricity Board & Ors.)**.

14. According to Mr. Banerjee, the First Land Acquisition Collector was therefore under an obligation to consider such circular/office memo dated February 19, 2021. Moreover, the computation has admittedly been made on the basis of the office memo dated February 19, 2021. This is the basic order. The computation thereon, is consequential. The memorandum dated February 19, 2021 is not under challenge. The basic order not being under challenge, reliefs are not to be granted by examining/setting aside the consequential order based thereon. A party is legally obliged to challenge the basic order and only if the same is found to be illegal, may consequential order be examined. In this regard learned counsel cited the decision reported at **(2010) 1 SCC 756 (paras 22 to 25) (Edukanti Kistamma (Dead) Thr. Lrs. & Ors. Vs. S. Venkatareddy (Dead) Thr. Lrs. & Ors.)**.

15. Learned counsel has also argued that by the law, the First Land Acquisition Collector was required to make calculation on the basis of norms.

16. The terms “in accordance with law” required the First Land Acquisition Collector to have the amount calculated, to be vetted and authenticated by his superior authority. The process of assessment by the Land Acquisition Collector has not been interfered with. It is only the calculation which is a mathematical exercise which has been undertaken on the basis of the relevant circular.

17. It is also argued that the letters dated 29.12.2020 and 29.06.2021 by which the First Land Acquisition Collector sent the calculation to its superior authority are internal correspondence. The final order for making payment of the sum of Rs. 1,62,43,175/- merely encloses therewith such internal communications. Such internal communications are not justifiable and cannot be the basis of a right to seek relief or to question the judicial order. It is also submitted that internal correspondence of the department cannot be relied upon by the KMC to question the legality of the judicial order for payment of occupational charges as determined by the First Land Acquisition Collector. In this regard, learned counsel has relied upon the judicial

decisions reported at **(2010) 2 SCC 422 (paras 17 to 19) (Union of India & Anr. Vs. Kartick Chandra Mondal & Anr.)** and **(2009) 15 SCC 705 (paras 43 to 45 and 48) (Shanti Sports Club & Anr. Vs. Union of India & Ors.)**. As per argument, the challenge of KMC against the order directing payment of Rs. 1,62,43,175/- is not tenable in law.

18. So far as the second appeal is concerned the argument which Mr. Banerjee put forward is that by letter dated 19.07.2022, the First Land Acquisition Collector has sought to hold a joint inspection of the said premises and to revisit the calculation process of mesne profit/occupational charges and this letter dated 19.07.2022 has been challenged by the Company in WPO No. 2380 of 2022. As the said Land Acquisition Collector has become functus officio, such letter dated 19.07.2022 could not have been issued particularly when the final decision had been communicated. Learned counsel relied upon the decision reported at **(2008) 8 SCC 92 (paras 26 to 29, 30) (State Bank of India & Ors. Vs. S.N. Goyal)** and also **(2012) 7 SCC 200 (para 26) (Haryana State Industrial Development Corporation Limited Vs. Mawasi & Ors.)** in this regard.

19. Learned counsel also harped on the point that that letter dated 19.7.2022 is manifestly contrary to the decision of the Joint Secretary, Government of West Bengal, by which the First Land Acquisition Collector was directed to take steps for asking KMC to make payment of Rs. 88,11,735/-. It was also argued that the requirement to revisit the issue of compensation for the property is also exfacie contrary to record. Several documents disclose the area is of 7031 sq.ft.

20. Learned counsel has distinguished the judicial decision reported at **(2008) 2 SCC 750 Narendra Singh's case (supra)** by contending that the decision is inapplicable. The 'mistake' of the department in that case was an erroneous decision of granting promotion by wrong interpretation of the applicable Rules. The Hon'ble Supreme Court therefore held "mistakes are mistakes and they can always be corrected by following due process of law. In ICAR v. T.K. Suryanarayan (1997) 6 SCC 766 it was held that if erroneous promotion wrongly interpreting the rules has been done, the employer cannot be prevented from applying the rules rightly and in correcting the mistake.....a court of law cannot ignore statutory rules".

20.1. In that decision, a relaxation contrary to the Rules was made in favour of the employee. There could be no estoppel against the law, and therefore the Rules had to be applied in correcting such mistake.

Moreover, the decision of the authority to revisit the issue of promotion was pursuant to a direction issued by the Administrative Tribunal, to reconsider the decision.

20.2. Also, there was a specific provision for issuance of a show cause notice. A show cause under Rule 31A of the Fundamental Rules was invoked and notice was issued to the respondent's employees seeking explanation. Considering the explanation, the erroneous promotion was set aside.

20.3. The said decision is not only inapplicable to the facts of this case but also in law, as in this case there is no provision conferring authority on the First Land Acquisition Collector to issue any notice to revisit any such 'mistake'. Moreso, when admittedly the said impugned exercise has been initiated only after filing of the writ petition by the Kolkata Municipal Corporation.

20.4. Learned counsel Mr. Banerjee has also distinguished the judicial decision reported in **Videsh Sanchar Nigam Ltd. & Anr. (supra)** cited by the appellant by contending that this decision was passed on facts where the method of calculation was totally contrary to and inconsistent with a Government circular.

20.5. Reference was also made to Rule 33 CCS (Pension Rules). Emoluments contrary to statutory rules and Government circular had been granted. That such employees were not entitled to such emoluments was also clarified by a Government circular issued by the Union of India.

20.6. Clarifications were also issued by the Government of India by office memorandum dated November 22, 1996 regarding such grants of emolument.

20.7. In such facts, bonafide mistakes which were contrary to office orders and statutory rules were found to be not conferring any right on any party, and therefore could be corrected. In the instant case, there is no such reference to any Government circular and/or statutory rule to enable the first Land Acquisition Collector to revisit the entire exercise on the basis of an alleged 'mistake'.

21. In fine, learned counsel submitted that the contention of the Corporation that the LA Collector ought to have followed the provisions of Section 14A of the West Bengal Premises Requisition and Control (Temporary Provision) Act, 1947 for determination of rent compensation is absolutely misconceived, deliberately misleading since admittedly in the judgment and order dated 25th March, 2015 passed

by this Court in respect of the premises in question, it has been settled that provisions of 1894 Act would apply till passing of award and the New Act (Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013), shall apply for determining the quantum of compensation. Moreover, the liability to make payment by Kolkata Municipal Corporation to the respondent is admitted. That the First Land Acquisition Collector is the authority to determine the occupational charges is also admitted. In litigation between the parties, several orders have been passed directing the Land Acquisition Collector to determine occupational charges. These orders have been accepted by the Kolkata Municipal Corporation. The Kolkata Municipal Corporation participated in the hearing before the Land Acquisition Collector in the exercise for determination of the occupational charges. The issue of jurisdiction therefore is not only res judicata between the parties but also is unavailable to Kolkata Municipal Corporation, after having participated in the hearing and having admitted the fact that the First Land Acquisition Collector is the authority to determine the occupational charges. This is further bolstered by the order dated 20.05.2022 passed by the Hon'ble Supreme Court of India where the order dated 28.01.2020 passed by the Division Bench of this Court was not interfered with. It was by the order dated 28.01.2020 that this Court had directed the First Land

Acquisition Collector to determine the amount of occupational charges payable for the period from 20.01.2000 to 15.12.2013.

It was submitted that the both the appeals be dismissed.

Court's View:-

22. Both the learned counsel referred to the order of the Division Bench passed on 28.01.2020, to buttress their respective contentions. If we go through the said judgment and order we shall find the following observations of the Hon'ble Division Bench (in connection with APO No. 181 of 2016):-

".....First, the notice of July 15, 2015 was limited to measurements being taken. The physical aspect of taking measurements may not require any adjudication or assessment of anything and the appellant may have chosen to stay away from the process. However, that would not disqualify the appellant from participating in the process of adjudication which ought to have followed upon the measurements being taken. After all, it is evident from the calculations furnished by the LA Collector that the rent of premises no.42, Ripon Street was assessed on the basis of a seemingly comparable property at 8B, Lindsay Street. As to whether the property at 8B, Lindsay Street was comparable to 42, Ripon Street property or not could not have been decided conclusively without the appellant herein, who was to be affected by the outcome

of the assessment, being informed of such fact or being given notice in such regard. There does not appear to have been any notice issued to the appellant subsequent to July 15, 2015 and the real business-end of the assessment or adjudication necessary for the determination of the occupation charges in accordance with law may have been conducted in the appellant's absence and without the appellant having any knowledge thereof.

Secondly and more importantly, the calculation-sheet which appears to be dated July 20, 2015 suggests that the calculations may have been hurriedly arrived at without even the measurements being taken. If such was the case, there was no meaningful determination and the entire exercise was a farce. Once such fact comes to the notice of a writ court, it would not condone such conduct or allow statutory authorities to function in such arbitrary manner.

In essence, what is evident from the calculations furnished by the LA Collector is that there may not have been any appropriate application of the mind to the matters in issue. Thus, the act of determination that the order of March 25, 2015 required the Collector to undertake may not have been performed. Once such glaring fact is brought to the notice of a Court, exercising authority under Article 226 of the Constitution, the minor matter as to previous contempt petition having been disposed of without any liberty being reserved unto the petitioners makes little or no difference.

It is true that some money was paid on account of occupation charges to the appellant herein as recorded in the order of August 3, 2015; but the money that was paid was not the occupation charges that had been required to be paid upon due determination thereof in accordance with law. The present writ petition has to be read as one for the due determination of such occupation charge, the exercise that was left incomplete by the Collector.

For the reasons aforesaid, the appeal succeeds. The judgment and order impugned dated May 13, 2016 are set aside and the writ petition stands allowed to the extent indicated herein below.

APO No.181 of 2016 and GA No. 1872 of 2016 are allowed by directing the concerned LA Collector to undertake the exercise of determining the occupation charges at premises no.42, Ripon Street, Kolkata for the period of January 20, 2000 to December 15, 2013 in accordance with law and upon due notice to both the appellant herein and Kolkata Municipal Corporation. Such, exercise should be completed by the relevant Collector within a period of three months from date. In the event the appellant is found entitled to any further payment, such payment should be discharged by the Corporation within a further period of three months therefrom, subject to the parties' rights to challenge the Collector's assessment in accordance with law.

There will be no order as to costs.”

23. From the above judgment, it is clear that at the time of passing of the said judgment the Division Bench came to the conclusion that the calculation dated July 20, 2015 was not based on actual measurement of the property and the Division Bench has deprecated the report by contending that when such measurement was not done in respect of the case property, there cannot be any meaningful determination and the entire exercise was a farce. Needless to mention that the direction contained in the order dated 28.01.2020 underlined the need for taking measurement of the case property for arriving at a proper determination or assessment of the rent compensation payable. The direction contained in the said order of the Division Bench was not complied with by the LA Collector since there is no whisper in the relevant minutes that in complying with the order dated 28.01.2020 any measurement of the property as indicated in the said order was carried out by the LA Collector or his subordinates. In this regard, I have gone through the minutes of determination of occupation charges in respect of the case property as per direction of the Division Bench in APO No. 181 of 2016, GA No. 1872 of 2016 with WP No. 327 of 2016 (paper book page no. 79 volume-I) and found that though the concerned officer has made specific averment that the said exercise was taken up in compliance of the order dated 28.01.2020 of the Division Bench, but nowhere in the said minutes it has been

mentioned that any process of measurement as indicated in the said order of the Division Bench was undertaken. It is seen from the said document that a comparative study was made in respect of premises no. 32A, Brabourne Road, Kolkata – 700 001 b) 8B, Lindsey Street, Kolkata and c) 31, Chowringhee Road, Kolkata for the purpose of assessment of rent. But there is no mention that any attempt for measuring the rentable structural area has been made by the concerned officer. Therefore, there is no iota of doubt that measurement of the relevant property or rentable structure as indicated in the order dated 28.01.2020 of the Division Bench was not undertaken by the First LA Collector.

24. The above conclusion is fortified by the contents of the letter dated 19th July, 2022 issued by the First LA Collector. The contents of the said letter are reproduced herein below for the sake of convenience:

*“GOVERNMENT OF WEST BENGAL
OFFICE OF THE FIRST LAND ACQUISITION COLLECTOR, KOLKATA
5, BANKSHALL STREET, 2ND FLOOR, KOLKATA – 700001
e-mail lac_knea@yahoo.com*

Memo No.

Date: 19.07.2022

*To
The Director
Rameshwar Properties Pvt. Ltd.
9, Hungerford St.
Kolkata – 700 071.*

Sub *Joint Inspection of premises no. 42, Ripon Street for determination of actual rentable area and calculation of occupational charge thereof regarding*

Sir,

Following, the filing of WPO No. 2289 of 2022 by K.M.C. in the matter of KMC & Ors. Vs. State of West Bengal, read with order dated 28.01.2020 of the Hon'ble High Court in A.P.O. No. 181 of 2016, GA No. 1872 of 2016 with W.P. No. 327 of 2016 the necessity for inspection of premises no. 42, Ripon Street with a view to determining the actual rentable area of structures as well as the vacant land has arises. Besides, detection of some errors in the calculation of occupational charge requires revisit of the calculation process of mesne profit/occupational charge.

In view of the above you are requested to remain present at premises no. 42, Ripon Street at 12 noon on 26.07.2022 where the inspection/measurement will be made by the Surveyor of this office in presence of the representatives of K.M.C. and Rameshwar Properties Pvt. Ltd. However, before that a formal discussion of the matter will be held at the chamber of the undersigned at 1 p.m. on 25.07.2022. You are also requested to make it convenient to be present in the said discussion.

This may be treated as most Urgent and Important.

Yours sincerely,

Sd/-

*First Land Acquisition Collector, Kolkata
Date – 19.07.2022"*

25. From the above it transpires that the First LA Collector, Kolkata wants to inspect the premises no. 42 Ripon Street for the purpose of determining the actual rentable area of structures as well as vacant

land. It, therefore, goes to show that the direction of the Division Bench contained in the order dated 28.01.2020 was not properly construed by the First LA Collector and it is found that after issuing the letter dated 12th August, 2021 the LA Collector has tried to fill up the lacuna in his decision contained in the said letter by issuing the letter dated 19th July, 2022 proposing an inspection of the premises for the purpose of determining the actual rentable area of structure, which he should have made prior to issuance of the letter dated 12th August, 2021. This goes to show that the mistake which was pointed out by the Division Bench was not rectified before issuance of the letter dated 12th August, 2021.

26. It is found from the impugned judgment dated 03.10.2023 that the learned Single Judge has taken a diametrically opposite stance by contending that as in the notification under Section 4 of the Land Acquisition Act, 1894 the area of the plot in question is shown to be about 7031 sq.ft. and other documents pertaining to the plot in question including the documents of acquisition demonstrate that the plot comprises of 7031 sq.ft., there is no doubt or dilemma in respect of the area of the plot and as such undertaking of further measurement shall be a futile exercise.

27. The above observation of the Learned Single Judge runs contrary to the findings in the Division Bench judgment dated 28.01.2020. Whereas the said judgment of the Division Bench categorically says that the calculation which has been made without measurement being taken cannot be the basis of a meaningful determination of the amount of rent compensation and as such the entire exercise was a farce, the Learned Single Judge has opined, in contradistinction with such observation of the Division Bench's judgment, that undertaking of such measurement would be a futile exercise.

28. The learned Single Judge did not consider that the area of rentable structure may be different from the area of the plot and therefore, the calculation with utmost care and precision, as indicated in the judgment of the Hon'ble Division Bench, should have been done in the best interest of justice. Therefore, I am of the view that as the letter dated 12th August, 2021 is not based on relevant measurements of the rentable structure on the plot as indicated in the judgment of the Division Bench, it suffers from severe illegalities or irregularities and the same cannot be the basis for determination of amount relating to rent compensation in connection with the relevant property.

29. As the issuance of the letter dated 19th July, 2022 by the First LA Collector shows that no such measurement was taken before the issuance of the letter dated 12th August, 2021 the entire exercise as indicated therein has again become futile and farcical.

30. Be it mentioned that without recalling the decision contained in the letter dated 12th August, 2021, the issuance of the letter dated 19th July, 2022, for further inspection of the premises shows that the decision taken by the LA Collector was not proper and appropriate. When the administrative authority had decided a matter and communicated the same to the concerned persons or authorities, the administrative authority does not have the power to reopen the issue without recalling its earlier order. In this case the administrative authority could have recalled its own order by citing reasons; but without doing so it wants to revisit its decision on the ground that necessary inspection is required to be held for determination of the amount of rent compensation. The action and attitude of the First LA Collector are not appreciable.

31. It is true that mistakes can be rectified even after issuance of an administrative order if they are clerical or arithmetical mistakes. Bonafide mistakes can also be rectified following due process or

applying the correct rules. But in our case it appears that the First LA Collector wants to reconstruct the reasonings of his decisions without recalling its own order. Therefore I do not agree with the learned counsel for the Corporation that any kind of mistake can be rectified even after issuance of publication of the relevant order by the administrative authority. Only bonafide mistakes and that too, by following due process of law, can be rectified.

32. Much argument has been advanced to the effect that as the First LA Collector was directed to determine the amount of rent compensation, he was not entitled to consult his superior or he cannot be allowed to take assistance from official resources. I do not find such argument to be acceptable, since the LA Collector was directed to determine the amount as aforesaid in accordance with law which includes rules, regulations and official norms prevalent in the department and therefore, by taking the assistance of the superior or following official norms/ circulars, etc. the LA Collector did not commit any wrong.

33. However, without further going into the controversy including the argument of the respondent for not challenging the basic order dated 19.02.2021, I would like to conclude that as it appears that the

LA Collector has failed to determine the amount of rent compensation by taking measurement of the actual rentable structure on the relevant plot, I find that the appeal filed by the KMC being No. APO 207 of 2023 is required to be allowed. Consequently, the memo dated 12.08.2021 along with memo dated 29.12.2020 and memo dated 29.06.2021 are cancelled. Thus the APO No. 207 of 2023 is hereby allowed. No order as to costs.

34. As far as the appeal being no. APO 208 of 2023 filed by KMC is concerned, I would like to conclude that the exercise of determination of rent compensation in respect of the relevant premises should be undertaken afresh as per the observations in the judgment dated 28.01.2020 passed in APO No. 181 of 2016. Accordingly the First LA Collector, Kolkata is directed to determine the amount of rent compensation in the light of the observations of the Division Bench in APO No. 181 of 2016 afresh within a period of two months from date in accordance with law. In view of the above, the letter/memo dated 19.07.2022 of the First LA Collector, Kolkata has become infructuous. The appeal being no. APO 208 of 2023 is disposed of accordingly without any order as to costs. The common judgment passed by the Learned Single Judge in WPO No. 2289 of 2022 and WPO No.2380 of 2022 on 03.10.2023 is hereby set aside.

35. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I Agree.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)