

Form No. J (2)

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Prasenjit Biswas

**M.A.T. 9 of 2025
IA NO: CAN/1/2025**

**Shri Jagannath Prasad Gupta & Ors.
vs.
Union of India & ors.**

For the Appellants : Mr. Saptangshu Basu, Senior Advocate
Mr. Gopal Ch. Ghosh, Advocate
Mr. Rajkrishna Mondal, Advocate
Mr. Ravi Kr. Shah, Advocate

For the respondents
Nos.2 & 4 : Mr. Jayanta Kr. Mitra, Senior Advocate
Mr. Sakya Sen, Senior Advocate
Mr. Suvadeep Sen, Advocate

Heard on : 02.07.2025

Judgment on : 02.07.2025

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of the writ petitioners and directed against the judgment and order dated December 17, 2024 passed in W.P.A. 20081 of 2022.

2. By the impugned judgment and order, learned Single Judge dismissed the writ petition after finding that, Metro Railway authority did not breach any provisions of law in acquiring premises no.1, National Library Avenue, Kolkata- 700027 (for the sake convenience hereinafter referred to as the National Library Property). Learned Single Judge also directed that, in the event, writ petitioners failed to vacate the National Library Property within a period of six weeks Metro Railway authority shall be at liberty to take steps in accordance with law to obtain vacant possession thereof. Local police authorities were directed to render assistance to the Metro Railway authority for such purpose.
3. Learned Senior Advocate appearing for the appellants submits that, the appellants are tenants of the National Library Property. He points out that, portion of premises no.1, National Library Avenue, Kolkata-700 027 was initially acquired by the Metro Railway authority. Since the appellants were not occupying the portion of the acquisition of such property, the appellants did not object thereto. Thereafter, Metro Railway authority proceeded to initiate proceedings for acquiring the remaining portion of the National Library Property. It is at this juncture that, the right, title and interest of the appellants stood affected, since, the appellants were occupying such portion of the National Library property. Consequently, the appellants raised objections under the provisions of the Metro Railway (Construction of Works) Act, 1978.

4. Learned Senior Advocate appearing for the appellants submits that, the acquisition of remaining portion of the National Library property were undertaken under the provisions of the Act of 1978. Since, the appellants are tenants in respect of the portion of the National Library property which is sought to be acquired under the Act of 1978, in terms of Section 9 of the Act of 1978, the appellants submitted objection. Such objection was heard and decided by an order dated July 1, 2022.
5. Learned Senior Advocate appearing for the appellants refers to the order dated July 1, 2022 and submits that, reason for overruling the objection raised by the appellants as appearing from the order dated July 1, 2022 is that, the National Library property was required for a public purpose.
6. Learned Senior Advocate appearing for the appellants submits that, the finding of public purpose returned by the order dated July 1, 2022 is perverse. He submits that, no public purpose is involved since, the pleadings before Court demonstrates that, Metro Railway authority was acquiring the National Library property for the purpose of accommodating Nepal Consulate. He submits that, Nepal Consulate is not immune from acquisition or requisition proceeding. In support of such contention he submits that, Nepal Consulate is governed by the Vienna Convention on Consular Relation, 1963 India Government ratified such Vienna Convention on Consular Relation, 1963. The same does not prohibit an acquisition from requisition of consulate property.

In support of such contention he relies upon Article 31 of the Vienna Convention on Consular Relation, 1963. He submits that, ability of acquiring authority to acquire a Consulate governed under Vienna Convention on Consular Relation, 1963 came up for consideration before Bombay High Court in **AIR 1997 Bombay 148 (Earth Builders, Bombay versus State of Maharashtra and others)** in which, the Bombay High Court was pleased to hold that, Consulate of any country is not immune from any requisition or acquisition proceeding.

7. Learned Senior Advocate appearing for the appellants submits that, once it is held that, Nepal Consulate is not immune from either acquisition or requisition proceeding in terms of Vienna Convention on Consular Relation, 1963, there was no impediment of Metro Railway in acquiring Nepal Consulate for the purpose of so-called expansion of the Metro Railway. In any event, he submits that, the actual line of the Metro Railway does not pass over from Nepal Consulate. Furthermore, if, the Metro Railway authority deemed it appropriate that the property belonging to Nepal Consulate is required for Metro Railway expansion the same can be acquired by the Metro Railway authority.
8. Learned Senior Advocate appearing for the appellants submits that, Metro Railway authority cannot be permitted to invoke the provisions of the Act of 1978 in order to acquire the National Library property on the ostensible purpose of accommodating Nepal Consulate therein. He

submits that, Metro Railway is not obliged to provide alternative accommodation to an individual whose property it is acquiring ostensibly for the purpose of construction of a Metro Railway. Therefore, the decision impugned in the writ petition dated July 1, 2022 is bad in law and the same is required to be set aside. The entirety of the acquisition proceeding in relation to the National Library property should be quashed as it does not come within the scope and ambit of the Act of 1978.

9. Learned Senior Advocate appearing for the Metro Railway authority submits that, the landlord of the National Library property, accepted acquisition. Landlord thereof, received the compensation amount. Landlord appeared before learned Single Judge and expressed the view that, they do not object to the acquisition proceeding at all. Rather, they accepted the same. In this regard, he draws the attention of the Court to the recording made in the impugned judgment and order.
10. Learned Senior Advocate appearing for the Metro Railway authority submits that, since, the appellants before Court are claiming to be tenants under the landlord, they obviously cannot claim a superior or higher right than their landlord. He relies upon **(1996) 11 Supreme Court Cases 501 (Municipal Corporation of Greater Bombay versus Industrial Development Investment Co. Pvt. Ltd and others)** for the

proposition that, once the landlord accepts the acquisition, the tenants cannot be permitted to assail the same acquisition.

11. Learned Senior Advocate appearing for the Metro Railway submits that, the completion of the construction of railway track in between Mominpur (Ex) to Esplanade section of Joka-BBD Bag Metro corridor is stalled due to the property of Nepal Consulate coming in between. He submits that, such property is required for the purpose of completion of such construction. Nepal Consulate raised objections when, the alignment of Metro Railway went in or about such property. Such issue was deliberated upon at the appropriate level between the Nepal Government as well as the India Government. He draws the attention of the Court to the several minutes of meeting prepared in this regard. He submits that, in course of such deliberations it was decided that, Nepal Consulate will be afforded alternative space. National Library property was identified as one of the properties available to Nepal Consulate to shift who agreed to accept the same in lieu of the present property. It is in this factual matrix that Metro Railway authority decided to initiate acquisition proceeding in respect of National Library property.

12. Learned Senior Advocate appearing for the Metro Railways submits that, a portion of the National Library property was already acquired. Remaining portion was found to be required for the purpose of accommodating Nepal Consulate. He submits that, unless, Nepal

Consulate is accommodated properly, the construction of the Metro Railway project as noted above cannot proceed with.

13. Learned Senior Advocate appearing for the Metro Railway authority draws the attention of the Court to the Diplomatic Relations (Vienna Convention) Act, 1972 and in particular to Section 8 thereof. He also refers to the schedule of the Act of 1972 and particularly to Article 22 thereof. He submits that, a diplomatic mission enjoys a level of immunity.
14. Learned Senior Advocate appearing for the Metro Railway authority submits that, despite, the immunity enjoyed by the Nepal Consulate in terms of the Act of 1972, the two governments agreed that, Nepal Consulate will be accommodated at the National Library property. Therefore, the National Library property is required for the Metro Railway project.
15. Learned Senior Advocate appearing for the Metro Railway authority, draws the attention of the Court to the series of events occurring with regard to the acquisition proceeding. He contends that, it is nobody's case that, provision of Chapter III of the Act of 1978 were not been adhered to. He submits that, Section 6 of the Act of 1978 empowers the Metro administration to acquire land for metro constructions. Notification under Section 7 of the Act of 1978 was duly published. Appellants submitted a written objection to the acquisition proceeding.

Appellants were heard and their objection was disposed of by a reasoned order passed in terms of Section 9 of the Act of 1978 on July 1, 2022. He submits that, the view taken by the Metro Railway Administration being plausible, the same need not be scrutinized by a Writ Court as a court of appeal.

16. Learned Senior Advocate appearing for the Metro Railway authorities submits that, the appellants did not make out any ground to interfere with the impugned judgment and order.
17. None appears for the landlords in the present appeal although, they represented before the learned Single Judge.
18. Metro Railway is processing construction of railway track in between Mominpur (Ex) to Esplanade section of Joka-BBD Bag Metro corridor. In respect of such project, Metro Railways published a notification under Section 7 of the Act of 1978 on October 9, 2020 for acquiring 105.324 sq. mtr. of premises no.1, National Library Avenue, Kolkata-700 027. Gazette notification dated October 9, 2020 was published in the daily newspaper on November 1, 2020 wherein, objections were invited.
19. Gazette notification under Section 10 of the Act of 1978 was published on October 11, 2021 in respect of the National Library property. Notice was published in the daily newspaper under Section 13 of the Act of 1978 for the purpose of submission of claim from persons having interest in the property acquired, on October 31, 2021. Gazette

notification under Section 7 of the Act of 1978 was published on January 12, 2022 for the purpose of acquiring the remaining quantum of 532.634 sq. mtr. of land at premises no.1, National Library Avenue, Kolkata-700027. Notification dated March 6, 2022 was published under Section 7 of the Act of 1978 with regard to 532.634 sq. mtr. of National Library property.

20. By a letter dated March 9, 2022 issued by the Ministry of External Affairs the Nepal Embassy was informed about shifting of Nepal Consulate to the remaining portion of the National Library property.
21. Appellants submitted the objections against the acquisition of the remaining portion of the National Library property on March 24, 2022. On the basis of such objection, Objection Cases were initiated. The objectors were heard by the Metro Railway authorities. By an order dated July 1, 2022, competent authority acting under the Act of 1978 rejected objections of the appellants in the objection cases recorded.
22. Metro Railway authority thereafter proceeded to issue notification under Section 10 of the Act of 1978 in respect of remaining portion of the National Library property on July 4, 2022. The owners of such property, did not object to such acquisition. Metro Railway authority published notice in the daily newspaper on July 17, 2022 in terms of Section 13 of the Act of 1978 inviting claims from persons having interest in the remaining portion of National Library property.

23. On August 10, 2022, joint inspection was conducted on the claim made by the owners of the property in respect of the premises no.1, National Library Avenue, Kolkata-700027. On December 23, 2022, possession was made over by the owners for the first tranche of acquisition being 105.326 sq. mtr. On February 10, 2023 a meeting was held at Katmandu Nepal between officials of Nepal Government as well as India Government authorities wherein, Government of Nepal agreed to the proposal of shifting its existing Consulate to the remaining portion of the National Library property.
24. On May, 15, 2023, joint inspection was held on application filed by the owners for the remaining portion of the National Library property. There are electronic mail exchange between the Ministry of External Affairs and the Metro Railway authorities about remaining portion of the National Library property.
25. Possession was sought to taken from the owners of the remaining portion of the National Library property on December 1, 2023. On December 18, 2023, possession of 105 sq. mtr. of land of the National Library property was handed over by the owners to the Metro Railway authorities on receipt of the compensation for such land.
26. Competent authority proceeded to deposit the compensation amount on January 10, 2024 for the remaining portion of the National Library property being 532.634 sq. mtr. of land as possession thereof could not

be taken in as it was occupied by several occupiers including the appellants.

27. Metro Railway project of railway track between Mominpur (Ex) to Esplanade section of Joka-BBD Bag Metro corridor falls squarely within the Act of 1978. Land admittedly is required for completion of such project. Alignment of such project is such that, it passes over a property where, Nepal Consulate is situated. Nepal Consulate raised objection with regard to the construction of such project. Elaborate discussions were held between the two nations for the purpose of finding out a solution to the impasse. It was agreed between the governments of the two nations that, Nepal Consulate will be accommodated at the remaining portion of the National Library property comprising an area of 532.634 sq. mtr. of land.
28. Decision of Metro Railway authority to acquire 532.634 sq. mtr. of land being the remaining portion of the National Library property therefore, cannot be said to be arbitrary, capricious or in colourable exercise of powers under the Act of 1978. A portion of the National Library property was already acquired for the implementation of Metro Railway project. Such acquisition was under the Act of 1978. The remaining portion of the National Library property, being 532.634 sq. mtr. of land is also required for completion of the Metro Railway project and therefore, cannot be said to be immune from the purview of Act of 1978.

29. Decision of the Metro Railway authority to initiate proceeding for acquisition of 532.634 sq. mtr. of land invoking the provisions of the Act of 1978 is not *de hors* the powers granted to the Metro Railway authorities under the Act of 1978. Metro Railway administration is empowered to acquire land for the construction of any metro railway or any work connected therewith in terms of Section 6 of the Act of 1978. Nothing is placed before us to suggest that, the Nepal Consulate land is not required or is not offending the construction of a Metro Railway as envisaged. Nothing is placed before us to establish that, the grievances of the Nepal Consulate, are misplaced. In any event, the Nepal Government and the India Government agreed to provide the Nepal Consulate with an alternative accommodation in order to ensure that the Metro Railway project is completed.
30. It is the contention of the appellants that, Metro Railway can acquire the Nepal Consulate land and that there is no impediment with regard thereto. In support of such contention reliance is placed on the Vienna Convention on Consular Relation, 1963 and **Earth Builders, Bombay (supra)**.
31. There are differences between a diplomatic mission and Consulate. Diplomatic missions enjoy certain immunities and privileges under the Vienna Convention on Diplomatic Relation, 1961. The Diplomatic Relation (Vienna Convention) Act, 1972 recognises some of the

provisions of the Vienna Convention on Diplomatic Relation, 1961 as embodied in the schedule to the Act of 1962.

32. As noted above, we are concerned with a Consulate. Nepal Consulate is governed by the provisions of the Vienna Convention on Consular Relation, 1963. The provisions of the Vienna Convention on Consular Relation, 1963 fell for consideration before the Bombay High Court in **Earth Builder, Bombay (supra)**. It was noticed that India Government ratified Vienna Convention on Consular Relation, 1963 on November 28, 1977. On appraising the several provisions of the Vienna Convention on Consular Relation, 1963, **Earth Builder, Bombay (Supra)** was of the view that, Article 31 of such Convention, 1963 does not prevent acquisition of a consulate provided all possible steps are taken to avoid impeding the performance of consular functions and prompt, adequate and effective compensation is paid to the sending State. It is precisely in this arena of cooperation that the two Governments namely the sending Government as also the host Government entered into elaborate deliberations as to the method and manner of accommodating the Nepal Consulate at an appropriate place so as not to violate the Vienna Convention on Consular Relation, 1963. It was agreed between Nepal Government and the India Government that the remaining portion of the National Library property will be acquired for the purpose of shifting the present location of the Nepal Consulate.

33. Significantly, the appellants before us are tenants. The landlord under which the appellants claim tenancy in respect of the remaining portion of the National Library property accepted the acquisition. In **Municipal Corporation of Greater Bombay (supra)** the Supreme Court noted that, it was a settled principles of law that a tenant cannot challenge a notification under Sections 4 and declaration under Section 6 of the Land Acquisition Act, 1894 when the landlord himself accepted the award and received compensation.
34. The Act of 1894 governs acquisition of land. The Act of 1978 empowers Metro Railways administration to acquire land required for the construction of a Metro Railway. In both the statutes, land can be acquired for a public purpose. The Act of 1894 does not specify the public purpose for which such statute can be invoked. The Act of 1978 however, circumscribes the power of the Metro Railway to initiate acquisition proceedings limited to construction of a Metro Railway and any other purpose connected therewith. We already noted that, the remaining portion of the National Library property was required for the completion of the Metro Railway project. Therefore, we are of the view that, by the same analogy as in relation to Sections 4 and 6 of the Act of 1984 vis-à-vis landlord and tenant in respect of an acquisition proceedings, as enunciated in **Municipal Corporation of Greater Bombay (supra)** will apply in respect of a acquisition proceeding under

the Act, 1978. A tenant cannot be allowed to challenge an acquisition under the Act of 1978 when its landlord accepted the same.

35. In view of the discussions, we find no ground to interfere with the judgment and order impugned. We, however, extend the time granted by the learned Single Judge for obtaining vacant possession of the property for a period of 2 weeks from date.
36. All interim orders and undertakings, if there be any, stand vacated.
37. **MAT 09 of 2025** along with the connected applications are **disposed of** without any order as to costs.

(Debangsu Basak, J.)

38. I agree.

(Prasenjit Biswas, J.)