

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

**PRESENT:
THE HON'BLE JUSTICE BIVAS PATTANAYAK**

**W.P.A. 6329 of 2019
CAN 1 of 2023
Gangaben Patel**

versus

Union of India & Ors.

For the Petitioner	:	Mr. Asok Kumar Banerjee, Senior Advocate Ms. Mitali Mukherjee, Advocate Mr. Debasis Guin, Advocate
For the State	:	Mr. Soumitra Bandyopadhyay, Advocate Mr. Subhasis Bandopadhyay, Advocate
For the Respondent No.2-N.H.A.I.	:	Mr. Dipankar Das, Advocate Mrs. Sanjana Nandi, Advocate
Heard on	:	12.11.2024, 25.11.2024, 20.12.2024, 17.01.2025
Judgment on	:	26.08.2025

Bivas Pattanayak, J. :-

1. This writ petition is filed by the petitioner seeking direction upon the respondent authorities to cancel and/or rescind and/or withdraw the notice dated 30th November, 2018 issued under Section 26 of the Control of National Highways and Traffic Act, 2002 (*hereinafter referred to as 'the Act of 2002'*) against the petitioner and release the land in question, which has not been utilized by the National Highways Authority since its acquisition for 50 years or more, in favour of the petitioner.

2. The petitioner's case in brief is as follows:

(i) Agricultural land and danga land belonging to Felu Charan Ghosh and others comprised within R.S. Plot No. 6265 appertaining to Khatian No. 2942, J.L. No. 20, Mouza-Kolora, Police Station-Domjur, measuring 119 decimals was requisitioned for stocking yard for supply of bricks and bats for substation Alampur-Uluberia, NH6 under land acquisition case being LA Case No. 57 (Act II) 62-63 and on 21st December, 1962, possession of the said land was taken over by Land Acquisition Department. In all, about 1159 decimals of land was acquired for the aforesaid purpose.

(ii) The construction of National Highways was completed prior to 1970 and major portions of the land since then remained unutilized by the Highway Division.

(iii) The petitioner is carrying on agriculture by cultivating on certain portion of land in the said plot and rest portion is lying barren since the same is not fit for cultivation. A major portion of the land acquired has been released in favour of the then owners by the Collector. At present, the requisitioned portion of land is being utilized as godown petrol pump.

(iv) By dint of Gazette Notification No. 20732 LA (PWD) dated 1st December, 1964, notice was given under sub-section (1a) of Section 4 of West Bengal Land (Requisition and Acquisition) Act, 1948 (Act II of 1948). The said Act has already been repealed and the purpose of acquisition for stocking yards for supply of bricks and bats for substation has also become redundant.

(v) Representations were made by the predecessor-in-interest of the petitioner namely Felu Charan Ghosh and others for release of unutilized excess land acquired for NH6 by the Government of West Bengal under Act II of 1948 before the Superintending Engineer, NH Circle No. 1 PW (Roads) Directorate and Executive Engineer NH Division, which was received by the respective office on 12th May, 1994. The said application was duly recommended by the local Gram Panchayat.

(vi) By letter under Memo No. 1177/1 LA (G) dated 27th June, 1994, the Special Land Acquisition Officer, Howrah informed the then owners namely Felu Charan Ghosh and others that their application for release of the land has been forwarded to the Executive Engineer PWD, Howrah Directorate for their views along with four plans showing the plot of land to be de-requisitioned.

(vii) An advocate's letter on behalf of the then land owners for release of the land was also submitted before the concerned authority.

(viii) Since no further steps were taken, the predecessor-in-interest of the petitioner namely Felu Charan Ghosh and others filed a writ petition before this Hon'ble Court being C.O. No. 9339 W of 1995. The said writ petition was disposed of on 21st April, 1995 directing the authority concerned authority to consider and dispose of annexure 'C' to the writ petition in accordance with law after hearing and taking into consideration the documents and papers to be filed at the time of hearing and by passing a reasoned order and till such date of disposal *status quo* as on that date shall continue.

(ix) The petitioner by two separate registered deeds of conveyance purchased 60 decimals in L.R. Plot No. 5472 (corresponding to R.S. Plot No. 6265) on 4th January, 2002. Thereafter the petitioner again purchased 30 decimals in the said plot on 12th October, 2007 and 5 decimals on 8th February, 2008.

(x) On 28th October, 2015, the petitioner sent an application before the Collector, Land Acquisition, Howrah & District Magistrate, Howrah and other authorities praying for de-requisition of the land which was requisitioned in L.A. Case No. 57 of 1962-63 for the purpose of stacking yards for completion of National Highways. The project is already complete and presently the land is not being utilized for any purpose.

(xi) The private respondents filed a writ petition being W.P. No. 11604(W) of 2017 without making the occupiers of the land a party to the proceeding, although complaint was made against the petitioners. The said writ petition was disposed of on 15th December, 2017 directing the National Highways Authority to issue notice under Section 26 of the Act of 2002. Pursuant thereto, notice was issued on 31st November, 2018.

(xii) Challenging the order of this Court passed in W.P. No. 11604 (W) of 2017, a Special Leave Petition was preferred before the Hon'ble Supreme Court. The Special Leave Petition was disposed of by directing that *"As the learned Counsel appearing on behalf of the public interest litigation petitioner has made statements that in the meantime the petitioners have been evicted pursuant to the notice*

issued in terms of the High court order, we are of the view that the petitioners should be left to the remedy to approach the High court for such appropriate orders as may be considered necessary. The special leave petition stands disposed of with the above observations.”

(xiii) Hence, this writ petition.

3. The writ petition is keenly contested by respondent no.2-National Highways Authority of India (*In short, ‘NHAI’*) by filing its affidavit-in-opposition with the following contentions:

- (i) The petitioner herein claimed to be the rightful owner of the land in question. However, the said plot of land was acquired in full for the purpose of development of National Highway No.6. The said plot was acquired by Government of West Bengal way back in 1962-63 in accordance with the provisions of law in Land Acquisition Case No. 57 (Act II) of 1962-63. After acquisition of the said plots, compensation was duly paid by the Collector, Howrah to the erstwhile owners and the ownership of the said plot was vested upon the Collector, Howrah.
- (ii) A writ petition being W.P. No. 11604 (W) of 2017 was filed before the Hon’ble High Court at Calcutta on 13th April, 2017 by Panchanan Bera and 23 others who are residents of Mouza-Kolara, P.S.-Domjur, District-Howrah, *inter alia*, seeking directions to initiate appropriate legal steps for removal of the unauthorized occupants from the Government land situated at Dag Nos. 6187, 6193, 6194, 6195, 6244, 6245, 6250, 6251, 6252, 6253, 6254, 6257, 6258, 6259, 6260, 6265, 6271, 6272, 6273, 6274, 6275, 6276, 6277, 6281, 6282, 6283, 6284,

6285, 6186, 6287 and also part of C.S. Plot No. 6296 and 6267 of Mouza Kolora.

(iii) By a letter dated 27th April, 2017, the Additional District Magistrate (LA), Howrah informed the respondent no.2-NHAI about the pendency of the writ petition and was directed to inform the action which has been taken with respect to the encroachments on the said acquired land by the NHAI.

(iv) A joint inspection was held on 7th April, 2017 with respect to the said plots of land which have been encroached upon, in presence of local people, the representatives of the Land Acquisition Department of District Howrah and the representatives of NHAI.

(v) By a letter dated 16th June, 2017, the Special Land Acquisition Officer (G), Howrah forwarded the joint inspection report along with its enclosures to respondent no.2-NHAI and directed to take necessary steps to remove the encroachments from the said acquired land by NHAI.

(vi) Pursuant thereto, on 14th August, 2017, notices were issued under Section 26 of the Act of 2002 against all illegal occupiers by respondent no.2-NHAI which was duly received on 18th August, 2017. The petitioner herein being an illegal occupier of the acquired land was also duly served with the said notice fixing the date of hearing on 8th September, 2017. The petitioner neither filed any representation nor appeared at the time fixed for hearing.

(vii) Thereafter on 15th December, 2017, the writ petition being W.P. No. 11604 (W) of 2017 was disposed of by directing "*the concerned*

authority to take all necessary steps for removal of the unauthorised occupiers from the land belonging to the National Highways at the disputed site by following the provision contained in Section 26 of the said Act as expeditiously as possible but preferably within a year and without causing any unnecessary delay so that the process of widening of the National Highway being NH-6 is not unnecessarily delayed”.

(viii) Pursuant to the direction of the Hon’ble Court, the illegal occupiers including the petitioner herein were time and again requested to remove their illegal encroachments from the acquired land. However, it was found that the said encroachments were not removed till the end of November 2018. Finding no other alternative, notices were issued on 30th November, 2018 to all illegal occupiers including the petitioner to remove all encroachments/unauthorised structures from the government land within 7 days failing which the same would immediately be removed as per Section 26 of the Act of 2002.

(ix) Despite receipt of notice dated 30th November, 2018, since the encroachments were not removed, NHAI carried out an eviction drive to remove all encroachers from the concerned stretch of the National Highway in the month of January 2019 and substantially removed the encroachers from the right of way of National Highway land. Though the petitioner is removed from some portion of encroachment, however, it has not been completely evicted from the concerned plot of land even though the entire plot of land has been acquired and the

petitioner is liable to be evicted completely from the concerned plot of land.

(x) Contrary to the claim of the petitioner that his plot is situated far away from the National Highway, it is pertinent to mention that the entire plot of land is beside the National Highway. As per the information and documents furnished by the Office of the District Magistrate and Collector, Howrah, it is evident that the Government of West Bengal in accordance with the provisions of law in Land Acquisition Case No. 57 (Act II) of 1962-63 acquired the said plot of land in its entirety and compensation for the entire plot measuring 1.19 acre was paid to the erstwhile owner by the Collector, Howrah and thereby the ownership of the said plot has vested upon the Collector, Howrah.

(xi) No action taken thereafter by the erstwhile owners of such acquired land or the subsequent purchasers of such acquired land, including mutation thereof, can be deemed to be legal and are void *ab initio*. The petitioner cannot claim the said land belonging to NHAI, Ministry of Road Transport and Highways, Government of India as her land merely on the strength of a deed executed illegally long after the acquisition of the land has been made in favour of NH-6.

(xii) In light of the above, it is prayed by the respondent no.2-NHAI for dismissal of the writ petition.

4. The State-respondent nos. 3, 4 and 6 also filed their affidavit-in-opposition with the following contentions:

(i) 11.59 acres of land in C.S./R.S. Plot Nos. 6187, 6193-6196, 6244-6245, 6250-6254, 6257-6260, 6265, 6267, 6271-6277, 6281-6288 of Mouza-New Kolora, J.L. No. 20 under P.S.-Domjur, District-Howrah including the subject land in C.S./R.S. Plot No. 6265 with entire area of 1.19 acres had been acquired in L.A. Case No. 57 (Act II) of 1962-1963 under West Bengal Land (Requisition & Acquisition) Act, 1948 for publication purpose of providing facilities for transport and communication for stacking yard for supply of bricks and bats for substation Alampur-Uluberia National Highways No.6. Possession of the subject land was taken over and handed over to the requiring body (PWD NHA Division) on 21st December, 1963. Notice under Section 4(1a) of the said Act II vide No. 20732 L.A. (P.W.) dated 1st December, 1964 was duly published in Calcutta Gazette.

(ii) The award for payment of compensation including the subject land was made observing all formalities and it was declared by the Collector, Howrah on 31st December, 1966. Payment of compensation in respect of subject land was made to different awardees at award Serial No.47 to 64 on 11th November, 1964 and through R.D. for other rest of the awardees.

(iii) The instant petitioner namely Gangaben Patel claims that by virtue of various registered deed executed between the year 2002-2008 she had purchased 0.95 acres of subject land out of total area of 1.19 acre. Therefore, the present petitioner is a post acquisition purchaser, and such purchase is void and illegal. The petitioner cannot purchase a government land, which is acquisitioned, as the

land vests with the State upon acquisition and any transaction executed thereafter is not binding upon the State.

(iv) In the year 2017, a mass petition was submitted before the National Highways Authority of India by some local villagers alleging misuse of acquired land by way of sale, transfer, encroachments and filling up of water bodies by some miscreants with a request to take immediate legal action against such miscreants. Consequently, a joint enquiry was held on 7th April, 2017 and the allegations were found to be true. The Project Director, National Highway Authority along with B.L. & L.R.O., Domjur were requested to take appropriate steps for recovery of government land. But eviction of such unlawful occupiers was not done.

(v) With the allegation of inaction of the concerned authority regarding eviction of such unlawful occupiers, one Panchanan Bera and others filed a writ petition before the Hon'ble High Court, Calcutta being W.P. No. 11604 (W) of 2017, which was disposed of directing *"the concerned authority to take all necessary steps for removal of the unauthorised occupiers from the land belonging to the National Highways at the disputed site by following the provision contained in Section 26 of the said Act as expeditiously as possible but preferably within a year and without causing any unnecessary delay so that the process of widening of the National Highway being NH-6 is not unnecessarily delayed"*.

(vi) As per the order/direction of the Hon'ble High Court, notices were issued to the unlawful occupiers by the Project Director of

National Highways Authority of India (PIU-Kolkata) under Section 26 of the Act of 2002.

(vii) The order passed by the Hon'ble High Court, Calcutta in W.P. No. 11604 (W) of 2017 was challenged in Special Leave Petition being no. 46765 of 2018 before the Hon'ble Supreme Court by the present writ petitioner. The Special Leave Petition was disposed of by directing that *"As the learned Counsel appearing on behalf of the public interest litigation petitioner has made statements that in the meantime the petitioners have been evicted pursuant to the notice issued in terms of the High court order, we are of the view that the petitioners should be left to the remedy to approach the High court for such appropriate orders as may be considered necessary. The special leave petition stands disposed of with the above observations."*

(viii) The National Highways Authority of India being a statutory body is bound to remove the unauthorised occupants in the interest of traffic safety or convenience. The instant petitioner is a post acquisition purchaser and, therefore, has no legal right to enjoy right, title over the subject land since the same has been acquired following the provisions of law and payment of compensation has been made long before the date of purchase. Possession was also handed over to the requiring body.

(ix) Initially an area of 13.47 acres of land in Mouza-New Kolora was proposed for acquisition for the project and possession was taken accordingly on 21st December, 1963. However, subsequently, an area of 1.88 acre in R.S. Plot No. 6248, 6249 and 6261 of Mouza-New

Kolora were excluded from the project and for the purpose of requisition, compensation from 21st December, 1963 to 20th March, 1982 was paid to the erstwhile owners of the land in respect of the aforesaid plots and acquisition proceeding was concluded for 11.49 acres of land following the provision of law.

(x) As soon as the acquisition proceeding is completed, the land stands vested with the State and the State becomes the owner of the land. The erstwhile owner of the land has been divested of ownership of land from the date of award. The writ petitioner having purchased 0.95 acres of subject land by virtue of 4 registered deeds between the years from 2002 to 2008 is therefore having no legal right title over the subject land.

(xi) Once the land is acquired and is handed over to the requiring body, it remains with the requiring body. If the acquired land is being unutilized from the end of requiring body, it may relinquish the land from the Land & Land Reforms and Refugee Relief & Rehabilitation Department, for utilization of other public purpose. However, the acquired land may not be withdrawn from acquisition as there is no such provision in law from withdrawal of acquisition and reverting it to the erstwhile owners of the land.

5. Mr. Asok Kumar Banerjee, learned Senior Advocate representing the writ petitioner, at the outset, submitted that the land of the petitioner lies at a far distance from the existing National Highway. Thus, in any stretch of imagination, the subject land cannot enure to the purpose of the National Highways. The land was acquired for the purpose stocking yards

for supply of brick and bats during construction of sub-station Alampur-Uluberia, NH6 in the district of Howrah. The said purpose has already exhausted and fulfilled. The subject land in question has remained unutilized for a considerable period of more than 50 years. The petitioner purchased 0.95 acres of land in R.S. Plot No. 6265 corresponding to L.R. Plot No. 5472. The predecessor-in-interest of the petitioner namely Felu Charan Ghosh and others made representation before the authority concerned for release of unutilized excess land duly recommended by local Panchayat. Though such application was forwarded to the Executive Engineer (PWD), Howrah Directorate seeking his views for release of plots of land by way of de-requisition, however, no further steps were taken. Thereafter the predecessor-in-interest filed a writ petition being C.O. No. 9339 W of 1995 wherein directions were issued to authority concerned to consider and dispose of annexure 'C' to the writ petition in accordance with law after hearing and taking into consideration the documents and papers to be filed at the time of hearing and by passing a reasoned order and till such date of disposal *status quo* as on that date shall continue. Be that as it may, no further steps were taken.

Alleging of encroachments and illegal occupation, some of the local villagers filed a writ petition before this Hon'ble High Court being W.P. No. 11604(W) of 2017 and the Hon'ble Court directed for issuance of notice under Section 26 of the Act of 2002. Challenging such order, the writ petitioner preferred a Special Leave Petition which was disposed of granting liberty to the petitioner to approach the High Court. Pursuant to the aforesaid order, this writ petition has been preferred.

The petitioner is a subsequent purchaser and not an encroacher. Therefore, notice under Section 26 of the Act of 2002 does not lie as against the petitioner. The subsequent transfer of the subject land in favour of the petitioner by the erstwhile land owners and the title of the petitioner accrued thereof has not been challenged and/or controverted by the respondents in the present writ petition. The petitioner has mutated her name and has been paying taxes. Once the claim of the petitioner is not controverted, the Court is to proceed on the basis of the averments made by the writ petitioner. To buttress his aforesaid contention, he relied on the decision of Hon'ble Supreme Court passed in ***Smt. Naseem Bano versus State of U.P. and others***¹.

The purpose of an order of mandamus is to remedy the defects of justice. In all cases where there is a specific legal right and there is no specific legal remedy for enforcing that right, one may seek for a mandamus. The High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion *mala fide* or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In support of his contention, he relied on decision of

¹ **AIR 1993 SC 2592**

Hon'ble Supreme Court passed in ***The Comptroller and Auditor General of India, Gian Prakash, New Delhi and another versus K. S. Jagannathan and another***².

Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive. In support his contention, he relied on the decision of Hon'ble Supreme Court passed in ***State of Rajasthan versus Ganeshi Lal***³.

Furthermore, the predecessor-in-interest of the petitioner and thereafter the petitioner herself is in possession of the subject land for more than 30 years and, therefore, a right through adverse possession is established in favour of the petitioner. To buttress his aforesaid contention, he relied on the following decisions:

(i) ***Secy. of State versus Debendra Lal Khan***⁴

(ii) ***Ravinder Kaur Grewal & Ors. versus Manjit Kaur & Ors.***⁵

Relying on the decision of Hon'ble Supreme Court in ***Hamid Ali Khan (D) through LRS & Anr versus State of U.P. & Ors***⁶, he submitted that the unutilized land ought to be released in favour of the petitioner.

² AIR 1987 SC 537

³ AIR 2008 SC 690

⁴ AIR 1934 Privy Council 23

⁵ (2019) 8 SCC 729

⁶ Civil Appeal No. 1267 of 2012

In light of his aforesaid submissions, he prayed for cancellation and withdrawal of the notice issued under Section 26 of the Act of 2002.

6. In reply to the above contentions of the petitioner, Mr. Dipankar Das, learned advocate representing respondent no.2-NHAI submitted that the petitioner is a subsequent purchaser of land measuring 95 *sataks* within L.R Plot No. 5472 (corresponding to C.S Plot No. 6265). The land of the petitioner is adjacent to NH-6. The predecessor-in-interest of the petitioner has already received compensation in respect of the land in question. As per the enquiry report dated 7th April 2017 of Assistant Land Acquisition Officer, there is encroachment of the land-in-question illegally by some encroachers. The list appended to the enquiry report would show that the present petitioner has encroached upon the land belonging to the Highways Authority. As per the letter dated 27th April 2017 of the Additional District Magistrate, Howrah all the plots of land including the subject plot was acquired and the possession of such plots were handed over to the requiring body i.e. NHAI. Further by letter dated 16th June 2017, it was informed to the Project Director, NHAI by Special Land Acquisition Officer(G), Howrah that plot nos. 6190, 6163, 6164, 6202, 6269, 6270 and 6287 of Mouza-Kolorah was found to be not acquired in the said LA case and plots of land measuring 11.59 acres in the said mouza was acquired. Thus, records reveal that the land in question has been acquired and possession handed over to the requiring body-NHAI and compensation has also been paid to the predecessor-in-interest of the petitioner. The petitioner who is a subsequent purchaser has no right whatsoever in the subject land. The petitioner has been removed from

certain portion of her illegal occupation. However, she is still in illegal occupation of certain portion of land till date. Pursuant to order passed the Hon'ble Division Bench of this court presided by Hon'ble Chief Justice, notice under Section 26 of Act of 2002 has been issued against the petitioner for her removal from illegal occupation. The date on which the matter was heard by the Hon'ble Supreme Court, notices were already issued. In light of his aforesaid submissions, he sought that the notice issued against the petitioner for removing her from illegal occupation of subject land should not be interfered with. He seeks for dismissal of the writ petition.

7. Mr. Soumitra Bandyapadhyay, learned advocate for the State-respondents, at the outset, submitted that upon completion of acquisition the subject land vested absolutely with the State. Once the land is vested it cannot be divested. In support of his contention, he relied on the decision of Hon'ble Supreme Court passed in ***V. Chandrasekaran and Another versus Administrative Officer and Others***⁷. Subsequent to acquisition, the persons who purchases is not competent to challenge the validity of the acquisition proceedings on any ground whatsoever. For the reason that the said deed executed in his favour does not confer upon him any title and at the most, he can claim compensation on the basis of vendor's title. The intendment of 2013 Act is to benefit the farmers etc. Subsequent purchaser cannot be said to be land owners entitled to restoration of land and are also not affected persons. Anyone who deals with land subsequent to acquisition does so at his own peril. The notification for acquisition gives

⁷ (2012) 12 SCC 133

a notice to the public at large that the land in respect to which it has been issued is needed for a public purpose and it further points out that there will be an impediment to anyone to encumber the land acquired thereunder. The alienation thereafter does not bind the State or the beneficiaries under the acquisition. The records of the land acquisition proceedings would show that the land has been acquired, possession has been handed over the requiring body-NHAI and compensation has been paid to the predecessor-in-interest of the petitioner. Therefore, the petitioner has no right accrued in her favour in respect of the land in question. In such circumstances, the writ petition falls short of merit. He seeks for dismissal of the writ petition. To buttress his contention, he relied on the decision of Hon'ble Supreme Court passed in ***Shiv Kumar and Another versus Union of India and Others***⁸.

8. Upon hearing the submissions of learned advocates for the respective parties, the only issue which is to be examined is whether the National Highways Authority was justified in issuing notice dated 30.11.2018 under Section 26 of the Control of National Highways (Land and Traffic) Act, 2002 or not.

9. It is the contention of the petitioner that the land in question comprised within L.R Plot No. 5472 (corresponding to C.S Plot No. 6265), Mouza-Kolora, Police Station-Domjur was requisitioned by the Government of West Bengal by a Notification dated 1st December, 1964 under West Bengal Land (Requisition and Acquisition) Act, 1948 (now repealed) for the purpose of stocking yards for supply of bricks and bats for sub-station

⁸ (2019) 10 SCC 229

Alampur-Uluberia of NH-6 and notice under sub-section (1a) of Section 4 of the said Act was also published. Thus, from the above contention it is admitted position that the land in question has been acquired upon due compliance of necessary statutory formalities. Both respondent no. 2-NHAI as well as State respondents also contends that the land in question has been acquired, possession handed over to the requiring body-NHAI and compensation has also been paid to the predecessor-in-interest of the petitioner. It also undisputed that notice was published under sub-section (1a) of Section 4 of West Bengal Land (Requisition and Acquisition) Act, 1948 (Act II of 1948) on 1st December, 1964.

10. At this stage, it would be apposite to refer to Section 4 of the Act II of 1948 as hereunder:

“Acquisition of Land -(1) *Where any land has been requisitioned under section 3, the State Government may use or deal with such land for any of the purposes referred to in sub- section (1) of Section 3 as may appear to it to be expedient.*

(1a) The State Government may acquire any land requisitioned under Section 3 by publishing a notice in the Official Gazette that such land is required for a public purpose referred to in sub-section (1) of Section 3.

(2) Where a notice as aforesaid is published in the Official Gazette, the requisitioned land shall, on and from the beginning of the day on which the notice is so published, vest absolutely in the (State) Government free from all incumbrances and the period of requisition of such land shall end.”

Upon bare reading of the aforesaid provisions, it clearly manifests that where a notice under Section 4(1a) of the Act-II of 1948 is published in the *Official Gazette*, the requisitioned land shall, on and from the beginning of the day on which the notice is so published, vest absolutely in the State Government free from all incumbrances and the period of requisition of such land shall end. Therefore, on and from 1st December, 1964 the subject land has vested absolutely with the State. As per the said

notification the possession of the subject land was taken over on 21st December, 1962. As per the letter dated 27th April, 2017 of the Additional District Magistrate, Howrah (Annexure C to the reply of respondent no.2-NHAI) all the plots of land including the subject plot was acquired and the possession of such plots were handed over to the requiring body i.e. NHAI. Further as per proceeding under Section 7 of the Act-II of 1948 (Annexure A to the reply of respondent no.2-NHAI) compensation has been paid to one Sachirani Kumar under serial no.64. An enquiry was conducted to ascertain the persons who are in illegal occupation. The Enquiry report dated 7th April, 2017 shows that said Sachirani Kumar is the beneficiary in respect of plot no. 6265. It is further revealed that the petitioner is in occupation of the land. Therefore, from the above documents it is quite evident that the requisition of subject land was made for the purpose of stocking yards for supply of bricks and bats for sub-station Alampur-Uluberia of NH-6, notice under Section 4(1a) of Act-II of 1948 was duly published and land has been acquired and payment of compensation made under Section 7 of Act-II of 1948 to the beneficiary of the land in question. As per provisions of Section 4(2) of the Act-II of 1948 the land has vested absolutely with the State. Further the possession of the subject land has also been delivered to respondent no.2-NHAI.

11. The petitioner admittedly, is a subsequent purchaser of the subject land and she sought for release of the land allegedly unutilized. At this juncture, the question arises as to whether any right, title and interest accrued in favour of the petitioner in the subject land. In order to find an

answer to the aforesaid query it would be profitable to refer to the decision of Hon'ble Supreme Court in *V. Chandrasekaran (supra)* as hereunder:

“15. The issue of maintainability of the writ petitions by the person who purchases the land subsequent to a notification being issued under Section 4 of the Act has been considered by this Court time and again. In *Pandit Leela Ram v. Union of India*, AIR 1975 SC 2112, this Court held that, any one who deals with the land subsequent to a Section 4 notification being issued, does so, at his own peril. In *Sneh Prabha v. State of Uttar Pradesh*, AIR 1996 SC 540, this Court held that a Section 4 notification gives a notice to the public at large that the land in respect to which it has been issued, is needed for a public purpose, and it further points out that there will be "an impediment to any one to encumber the land acquired thereunder." The alienation thereafter does not bind the State or the beneficiary under the acquisition. The purchaser is entitled only to receive compensation. While deciding the said case, reliance was placed on an earlier judgment of this Court in *Union of India v. Shri Shiv Kumar Bhargava & Ors.*, JT (1995) 6 SC 274.

16. Similarly, in *U.P. Jal Nigam v. M/s. Kalra Properties Pvt. Ltd.*, AIR 1996 SC 1170, this Court held that, purchase of land after publication of a Section 4 notification in relation to such land, is void against the State and at the most, the purchaser may be a person- interested in compensation, since he steps into the shoes of the erstwhile owner and may therefore, merely claim compensation. (See also: *Star Wire (India) Ltd. v. State of Haryana & Ors.*, (1996) 11 SCC698).

17. In *Ajay Kishan Singhal v. Union of India*, AIR 1996 SC 2677; *Mahavir & Anr. v. Rural Institute, Amravati & Anr.*, (1995) 5 SCC 335; *Gian Chand v. Gopala & Ors.*, (1995) 2 SCC 528; and *Meera Sahni v. Lieutenant Governor of Delhi & Ors.*, (2008) 9 SCC 177, this Court categorically held that, a person who purchases land after the publication of a Section 4 notification with respect to it, is not entitled to challenge the proceedings for the reason, that his title is void and he can at best claim compensation on the basis of vendor's title. In view of this, the sale of land after issuance of a Section 4 notification is void and the purchaser cannot challenge the acquisition proceedings. (See also: *Tika Ram v. State of U.P.*, (2009) 10 SCC 689).

18. In view of the above, the law on the issue can be summarized to the effect that a person who purchases land subsequent to the issuance of a Section 4 notification with respect to it, is not competent to challenge the validity of the acquisition proceedings on any ground whatsoever, for the reason that the sale deed executed in his favour does not confer upon him, any title and at the most he can claim compensation on the basis of his vendor's title.”

12. In *Shiv Kumar (supra)* following the above decision the Hon'ble Supreme observed that a purchaser after Section 4 notification does not acquire any right in the land as the sale is *ab initio void* and has no right to claim land under the Policy.

13. Thus, bearing in mind the aforesaid proposition laid down by the Hon'ble Supreme Court, it can be said that the purchase of land after

publication of notification under Section 4(1a) of the Act-II of 1948 by the petitioner is void and sale deed executed in her favour does confer upon her any title to the subject land. Further the alienation subsequent to publication of such notice does not bind the State or the beneficiary under the acquisition. Hence by dint of such purchases, which is the subject matter herein, no right, title and interest over the subject land accrues in favour of the petitioner.

14. The petitioner contends that on 28th October, 2015, the petitioner sent an application before the Collector, Land Acquisition, Howrah & District Magistrate, Howrah and other authorities praying for de-requisition of the land which was requisitioned in L.A. Case No. 57 of 1962-63 for the purpose of stacking yards for completion of National Highways. The project is already complete and presently the land is not utilized for any purpose. Now the question is whether the subject land can be divested and restored to the petitioner. It would be apposite to reproduce the relevant observation of Hon'ble Supreme Court in *V. Chadraseskaran (supra)* as hereunder:

“25. It is a settled legal proposition, that once the land is vested in the State, free from all encumbrances, it cannot be divested and proceedings under the Act would not lapse, even if an award is not made within the statutorily stipulated period. (Vide: Avadh Behari Yadav v. State of Bihar & Ors., (1995) 6 SCC 31; U.P. Jal Nigam v. Kalra Properties (P) Ltd. (Supra); Allahabad Development Authority v. Nasiruzzaman & Ors., (1996) 6 SCC 424, M. Ramalinga Thevar v. State of Tamil Nadu & Ors., (2000) 4 SCC 322; and Government of Andhra Pradesh v. Syed Akbar & Ors., AIR 2005 SC 492).

26. The said land, once acquired, cannot be restored to the tenure holders/persons-interested, even if it is not used for the purpose for which it was so acquired, or for any other purpose either. The proceedings cannot be withdrawn/abandoned under the provisions of Section 48 of the Act, or under Section 21 of the General Clauses Act, once the possession of the land has been taken and the land vests in the State, free from all encumbrances. (Vide: State of Madhya Pradesh v. V.P. Sharma, AIR 1966 SC 1593; Lt. Governor of Himachal Pradesh & Anr. v. Shri Avinash Sharma, AIR 1970 SC 1576; Satendra Prasad Jain v. State

of U.P. & Ors., AIR 1993 SC 2517; Rajasthan Housing Board & Ors. v. Shri Kishan & Ors., (1993) 2 SCC 84 and Dedicated Freight Corridor Corporation of India v. Subodh Singh & Ors., (2011) 11 SCC 100).”

The above observation of the Hon’ble Supreme Court manifest that once the land is vested in the State, free from all encumbrances, it cannot be divested. Further land once acquired, cannot be restored to the tenure holders/persons-interested, even if it is not used for the purpose for which it was so acquired, or for any other purpose either. Therefore, the prayer of the petitioner is not tenable in law.

15. It has been vociferously argued on behalf of the petitioner relying on *Naseem Bano (supra)* that as the subsequent transfer of the subject land in favour of the petitioner by the erstwhile land owners, the title of the petitioner accrued thereof, the mutation in favour of the petitioner and payment of property taxes has not been challenged and/or controverted by the respondents in the present writ petition, hence the Court is to proceed on the basis of the averments made by the writ petitioner. Since the petitioner is paying tax to the Government of West Bengal a right over the subject land accrued in her favour.

16. In *Naseem Bano (supra)* an appeal was directed before the Hon’ble Supreme court against a judgment of the Allahabad High Court relating to appointment on the post of L.T Grade teacher in Home Science for high school classes in Mahila Seva Sadan Inter College, Allahabad. The Hon’ble Supreme Court found that it was not disputed in the reply of respondent nos. 1 to 4 that 40% of the posts which have to be filled up by promotion had not been filled up and the denial of the promotion to the appellant was justified on the sole ground that she was not qualified to be promoted to

L.T grade and held that the High Court should have proceeded on the basis that the said averments had been admitted by respondents. The facts of the said decision are distinguishable with the case at hand. Moreover, a claim to title to property cannot be made only on the basis that the transfer has not been disputed or mutation of the property in the name of the petitioner and the payment of property tax has not been denied. Further it is settled position of law that record of rights does not confer title to the property. Therefore, mutation of the subject land in the name of the petitioner cannot be held to confer title upon her, when the transfer of the subject land in her favour is found to be void for the reason of it being vested to the State absolutely on the date such transfers took place.

17. Furthermore Section 23 of the Control of National Highways (Land and Traffic) Act, 2002 provides as hereunder:

“23. Highway land to be deemed as property of Central Government.—(1) All lands forming parts of a Highway which vest in the Central Government or which do not already vest in the Central Government but have been acquired for the purpose of Highway shall, for the purposes of this Act, and other Central Acts, be deemed to be the property of the Central Government as owner thereof.

(2) The Highway Administration shall cause to be maintained a record in the prescribed manner in which the particulars of the lands, relating to the Highway, of which the Central Government is the owner shall be entered and the entries of the particulars of such lands in any record maintained for such purpose before the commencement of this Act shall be deemed to be the entry of the particulars of such lands made in the first said record and accordingly the Central Government shall be deemed to be the owner of the lands regarding which the entries have been made in such records maintained before the commencement of this Act.

(3) Any person claiming against the ownership of the Central Government referred to in sub-section (2) shall make written complaint to the Highway Administration and prove his claim before it and the Highway Administration, after considering the evidence produced by such person, may correct such records or reject the claim.”

The aforesaid provisions clearly shows that all lands forming parts of a Highway which vest in the Central Government or which do not already

vest in the Central Government but have been acquired for the purpose of Highway shall, for the purposes of this Act, and other Central Acts, be deemed to be the property of the Central Government as owner thereof. Thus, as the subject land having acquired for the purpose of the National Highways, hence the Central Government is the deemed owner of the said property. Accordingly, the petitioner cannot claim any title over the said property.

18. That apart Section 24(1) of the said Act of 2002 which deals with prevention of occupation of highway land provides no person shall occupy any highway land or discharge any material through drain on such land without obtaining prior permission, for such purpose in writing, of the Highway Administration or any officer authorised by such Administration in this behalf. The petitioner has not made out any case that she is in occupation of the subject with the prior permission of the Highway Administration. Such being the position the occupation of the petitioner over the subject land is illegal.

19. Section 26 of the Act of 2002 lays down the procedure for removal of unauthorized occupants from the land of the Highways which is reproduced hereunder for the convenience of discussion.

“26. Removal of unauthorised occupation.—(1) Where the Highway Administration or the officer authorised by such Administration in this behalf is of the opinion that it is necessary in the interest of traffic safety or convenience to cancel any permit issued under sub-section (2) of section 24, it may, after recording the reasons in writing for doing so, cancel such permit and, thereupon, the person to whom the permission was granted shall, within the period specified by an order made by the Highway Administration or such officer restore the portion of the Highway specified in the permit in such condition as it was immediately before the issuing of such permit and deliver the possession of such portion to the Highway Administration and in case such person fails to deliver such possession within such period, he shall be deemed to be in unauthorised occupation of highway land for the purposes of this section and section 27.

(2) When, as a result of the periodical inspection of highway land or otherwise, the Highway Administration or the officer authorised by such Administration in this behalf is satisfied that any unauthorised occupation has taken place on highway land, the Highway Administration or the officer so authorised shall serve a notice in a prescribed form on the person causing or responsible for such unauthorised occupation requiring him to remove such unauthorised occupation and to restore such highway land in its original condition as before the unauthorised occupation within the period specified in the notice.

(3) The notice under sub-section (2) shall specify therein the highway land in respect of which such notice is issued, the period within which the unauthorised occupation on such land is required to be removed, the place and time of hearing any representation, if any, which the person to whom the notice is addressed may make within the time specified in the notice and that failure to comply with such notice shall render the person specified in the notice liable to penalty, and summary eviction from the highway land in respect of which such notice is issued, under sub-section (6).

(4) The service of the notice under sub-section (2) shall be made by delivering a copy thereof to the person to whom such notice is addressed or to his agent or other person on his behalf or by registered post addressed to the person to whom such notice is addressed and an acknowledgment purporting to be signed by such person or his agent or other person on his behalf or an endorsement by a postal employee that such person or his agent or such other person on his behalf has refused to take delivery may be deemed to be prima facie proof of service.

(5) Where the service of the notice is not made in the manner provided under sub-section (4), the contents of the notice shall be advertised in a local newspaper for the knowledge of the person to whom the notice is addressed and such advertisement shall be deemed to be the service of such notice on such person.

(6) Where the service of notice under sub-section (2) has been made under sub-section (4) or sub-section (5) and the unauthorised occupation on the highway land in respect of which such notice is served has not been removed within the time specified in the notice for such purpose and no reasonable cause has been shown before the Highway Administration or the officer authorised by such Administration in this behalf for not so removing unauthorised occupation, the Highway Administration or such officer as the case may be, shall cause such unauthorised occupation to be removed at the expenses of the Central Government or the State Government, as the case may be, and impose penalty on the person to whom the notice is addressed which shall be five hundred rupees per square metre of the land so unauthorisedly occupied and where the penalty so imposed is less than the cost of such land, the penalty may be extended equal to such cost.

(7) Notwithstanding anything contained in this section, the Highway Administration or the officer authorised by such Administration in this behalf shall have power without issuing any notice under this section to remove the unauthorised occupation on the highway land, if such unauthorised occupation is in the nature of— (a) exposing any goods or article— (i) in open air; or (ii) through temporary stall, kiosk, booth or any other shop of temporary nature, 9 (b) construction or erection, whether temporary or permanent, or (c) trespass or other unauthorised occupation which can be removed easily without use of any machine or other device, and in removing such occupation, the Highway Administration or such officer may take assistance of the police, if necessary, to remove such occupation by use of the reasonable force necessary for such removal.

(8) Notwithstanding anything contained in this section, if the Highway Administration or the officer authorised by such Administration in this

behalf is of the opinion that any unauthorised occupation on the highway land is of such a nature that the immediate removal of which is necessary in the interest of— (a) the safety of traffic on the Highway; or (b) the safety of any structure forming part of the Highway, and no notice can be served on the person responsible for such unauthorised occupation under this section without undue delay owing to his absence or for any other reason, the Highway Administration or the officer authorised by such Administration may make such construction including alteration of any construction as may be feasible at the prescribed cost necessary for the safety referred to in clause (a) or clause (b) or have such unauthorised occupation removed in the manner specified in sub-section (7).

(9) The Highway Administration or an officer authorised by such Administration in this behalf shall, for the purposes of this section or section 27, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:— (a) summoning and enforcing the attendance of any person and examining him on oath; (b) requiring the discovery and production of documents; (c) issuing commissions for the examination of witnesses; and (d) any other matter which may be prescribed, and any proceeding before such Administration or officer shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860) and the Administration or the officer shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)."

Bearing in mind the aforesaid provisions, since it is found that the petitioner is in unauthorized, illegal occupation of the subject land, hence the Highway Administration as per Section 26(2) of Act of 2002 is under statutory obligation to serve a notice in a prescribed form on the person causing or responsible for such unauthorised occupation requiring him to remove such unauthorised occupation and to restore such highway land in its original condition as before the unauthorised occupation within the period specified in the notice. The respondent no.2-NHAI following such provisions issued notice under Section 26(2) of the Act of 2002 for removal of the petitioner who is in illegal possession of the subject land. Therefore, the action taken by the respondent no.2-NHAI cannot be called in question.

20. Though it is settled proposition of law that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a

writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred as laid down in *K. S. Jagannathan (supra)* yet the same does not apply to facts of the present case as there is no wrong exercise of discretion found on the part of respondent no.2-NHAI in issuing impugned notice under Section 26 of the Act of 2002 against the petitioner since she is in illegal occupation of the subject land belonging to Highways Authority.

21. Again, the proposition in *Ganeshi Lal (supra)* that one additional fact or different fact may make a world of difference between conclusions in two cases though a settled proposition of law but is hardly of any consequence to facts in hand.

22. Relying on the decision of Hon'ble Supreme Court in *Debendra Lal Khan (supra)* and *Ravinder Kaur Grewal (supra)* it has been strenuously argued on behalf of the petitioner that since her predecessor-in-interest and subsequently she after purchase is in possession of the subject land for more than 50 years the petitioner has acquired title by way of adverse possession. Such argument is not acceptable for the reason as follows.

23. Undisputedly, the subject land was acquired by the State and by application of law is vested with the State. The compensation has been

paid to the then land owners and the possession of the land has been handed over to the requiring body. It is abundantly clear that once the land is acquired by the Government, it vests in the State free from all encumbrances. The petitioner is a subsequent purchaser and is found to be in illegal occupation. No occupant of such land could continue to claim subsisting interest in the land so as to continue to occupy the same once the land vests in the Government pursuant to its acquisition. The petitioner contends that from the period of her erstwhile land owners and till date since 50 years the petitioner and her erstwhile land owners were/are in possession of the subject land. Be that as it may, mere possession for a long period even over a statutory period will not be sufficient to mature title to the petitioner by adverse possession. Adverse possession requires continuous, hostile and exclusive possession with the intent to possess as owner, which is incompatible with land vested in the State after lawful acquisition. Once land vests in the State under lawful acquisition, the rights of the original owners are extinguished and possession taken by the State is presumed to be lawful making adverse possession untenable. Upon vesting in the State any subsequent possession by others is illegal and amounts to trespass barring the claim of adverse possession. Therefore, in the facts and circumstances of the present case, the plea of adverse possession cannot be entertained. By the deeming provisions of Section 23 of the Act 2002, the Highways Authority has become the owner of the subject land. Since the rights of the original owners are extinguished, the land cannot be reclaimed through adverse possession. Hence the ratio of the aforesaid decision is not applicable to

this case. That apart, the decisions in *Debendra Lal Khan (supra)* and *Ravinder Kaur Grewal (supra)* are in relation to civil appeals.

24. In *Hamid Ali Khan (supra)* the writ petitioners' case was that they were running a cattle market in Sy 880 and Sy 893. In order to grab more land, the second respondent namely the Authority started proceedings to acquire more land allegedly needed for the Commercial cum Residential Scheme which included the property in question. The challenge in the said case was against notification issued under Section 4 and Section 17(4) of the Land Acquisition Act. Thus the facts involved in the cited decision is distinguishable from case at hand where there is no challenge to acquisition proceedings as such.

25. It has been vociferously argued on behalf of the petitioner that since the subject land is not beside the National Highways hence the same should be released in favour of the petitioner by the Authority concerned. On the contrary learned advocate for respondent no.2-NHAI relying on a map, argued that the subject land is beside the Highways. Be that as it may, the said aspect is hardly of any consequence as the subject land has absolutely vested with the State and cannot be divested.

26. In light of the above discussion, it is found that the impugned notice dated 30th November, 2018 of respondent no.2-NHAI has been issued rightly for removal of the petitioner who is in illegal occupation of the subject land in terms of Section 26 of the Act of 2002. Therefore, the present writ petition fall short of merit and is liable to be dismissed.

27. Accordingly, the writ petition being no. **W.P.A 6329 of 2019** stands dismissed.

- 28.** There shall be no order as to costs.
- 29.** All connected applications, if any, stand disposed of.
- 30.** Interim orders, if any, stand vacated.
- 31.** Urgent photostat certified copy of the order, if applied for, be given to the parties upon compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)