

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

Present:

The Hon'ble Justice Sugato Majumdar

CS/168/2007

IA NO: GA/1/2007 (OLD NO. GA/2495/2007)

DAULAT SINGH SURANA & ORS.

VS

STATE OF WEST BENGAL & ORS.

For the Plaintiffs : Mr. Debayan Bera, Adv.
Mr. Anirban Pramanick, Adv.
Mr. Punarbasu Nath, Adv.
Ms. Bhagyashree Dey, Adv .

For the State : Mr. Suman Kr. Dutt, Sr. Adv.
Mr. Paritosh Sinha, Adv.
Mr. Shourya Samanta, Adv.

Hearing concluded on : 14.07.2025

Judgment on : 28.07.2025

Sugato Majumdar, J.:

The instant suit was filed by the Plaintiffs praying for a decree for a sum of Rs.9,30,97,394/- on account of damages for unauthorized occupation, mandatory injunction along with other reliefs.

Plaint Case:

The plaint case may be summarized as follow:

The Plaintiffs were the owners of a piece and parcel of the property located at premises no. 4, Pretoria Street, Kolkata – 700071 containing two storied buildings, outhouses and garden land, stretching over an area of 38 cottah of land. The brick built structure along with adjoining land situated on the western part of the entire land admeasured about 15 cottah 5 chittacks 14 sq. ft. The rest of the land measuring about 22 cottah was garden area, located in the eastern part of the premises.

The premises in its entirety was requisitioned under the Defence of India Act/Rules and was again requisitioned under the West Bengal Premises Requisition & Control (Temporary) Provisions Act, 1947.

In terms of an Order dated 17/09/1985 passed in Matter No.872 of 1984 this Court held that no public purpose would be served for requisition of the garden land measuring about 22 cottah 10 chittacks 31 sq. ft. and directed the State to deliver up possession of that part to the Plaintiffs. So far as the rest of the land appertaining to the residential building was concerned it was held that requisition could not continue for indefinite period of time and the order of requisition would stand quashed after six months if proceedings had not been initiated under the Land Acquisition Act, 1894. But the Government did not initiate proceeding within the stipulated period.

On 14/10/1985, order of derequisition of the garden land measuring about 22 cottah 10 chittacks 31 sq. ft. was issued by the Competent Authority, but did not deliver of possession on 16/10/1985.

Order of derequisition of the structural part of the premises situated on the western part was issued by the Competent Authority and the Plaintiffs were directed to take possession thereof along with the garden part on 02/08/1986. But possession was not delivered.

On 31/05/1986, the Defendant no. 3 being the First Land Acquisition Collector, Kolkata issued an order for requisition and acquisition of the entire land under West Bengal Land (Requisition & Acquisition) Act, 1948. The order passed by the Defendant no. 3 was quashed by this Court in terms of the order dated 16/07/1987 in C.O. No. 8407(w) of 1987. Appeal was preferred against the order in the Division Bench of this Court being Appeal No.2224 of 1987 where the Division Bench annulled acquisition of garden part of land measuring about 22 cottah 10 chittacks 31 sq. ft. and allowed the Defendant no. 1 to go for acquisition of the structural part and 15 ft. of the land from the building part. A special leave petition was filed before the Supreme Court of India which was dismissed.

On 02/05/1991, the Defendant delivered up vacant possession of the area of the premises measuring about 22 cottah 10 chittacks 31 sq. ft. land situated in the eastern portion of the premises no. 4, Pretoria Street, Kolkata – 700071. The Plaintiffs thereafter separated the western part of the premises measuring about 15 cottah 5 chittacks 14 sq. ft. by constructing boundary wall. The Defendants no. 1 & 2 retained possession of the western part of the premises comprising of structural part as aforesaid. The Defendants did not initiate any proceeding for acquisition of this structured part within nearby time but retained possession thereof. The Plaintiff received rent compensation under West Bengal Act No. V of

1947 for a period ending on 31/05/1986. For subsequent period, no compensation was paid.

Process of acquisition of the western portion of the premises was initiated by a notice dated 13/12/1994 under Section 4 of the Land Acquisition Act, 1894. This was followed by notices under Section 6 of the Act dated 23/06/1995 and notice dated 15/07/2003 under Section 9 as well as notice dated 06/08/2003 under Section 11 of the Act. The Plaintiffs filed objections on 18/12/2006. Previously, the Plaintiffs filed objection against the notice under Section 9 of the Land Acquisition Act, 1894.

Acquisition of the western portion of the premises consisting of the building part under the Land Acquisition Act, 1894 was challenged by the Plaintiffs before the Single Bench of this High Court in W.P. No. 13522(w) of 1995. Single Bench decided the writ petition in favour of the Plaintiffs by setting aside the acquisition notice. The Division Bench in FMAT No. 06 of 1997 reversed the order passed by the Single Bench and upheld the validity of the acquisition, in terms of the Order and Judgment dated 10/10/2002. This order was challenged by the Plaintiffs in the Supreme Court of India in Civil Appeal No. 6756 of 2003. During pendency of the Appeal, a valuer was appointed from the panel of the Original Side of this High Court for fixation of rental damages from 01/06/1986 to the end of July 2004. Another valuer was later appointed. The Bench of the Supreme Court of India directed the Defendant state to deposit a sum of Rs.25,00,000/- and also directed the Defendant state to continue to pay Rs.3,00,000/- as rental from 01/07/2006 till the disposal of the Appeal.

CA No.6756 of 2003 was finally dismissed by the Supreme Court of India upholding the order passed by the Division Bench. The final Judgment was delivered by the Supreme Court of India on 13/11/2006.

It is contended by the Plaintiffs that they are entitled to damages/rental for use and occupation of the premises by the Defendant no. 1 till vesting under the Land Acquisition Act, 1894. It is contended that the Plaintiffs are entitled to compensation and/or damages, as detailed below:

PARTICULARS

For the period from June 1, 1986 to July 31, 2004	Rs.9,88,24,967/-
For the period from August 1, 2004 till June, 30, 2007	Rs. 70,92,427/-
Total	Rs.10,59,17,394/-
Less amount received	Rs.1,28,20,000/-
Net Due	Rs.9,30,97,394/-

Accordingly, the instant suit has been instituted by the Plaintiffs praying for decree for a sum of Rs.9,30,97,394/- or such other sum as may be of damages/rental of the western part of the premises as aforesaid, alternatively enquiry into damages/rental; declaration that the Defendants are liable to pay to the Plaintiffs and the later are entitled to receive occupational charges for the months of July 2007 onwards till vesting of the property, mandatory injunction directing the Defendants to pay at a rate of Rs.8,20,467/- per month from July 2007 until vesting, along with other prayers.

Written Statement:

The Defendants contested the suit by filing written statement.

The positive case made out by the Defendants are that the entire premises no. 4, Pretoria Street, Kolkata-700071 along with outhouses and vacant compound was requisitioned under Defence of India Rules and possession of it was made over to the Commissioner of Police on 05/07/1943. The property was derequisitioned on 29/12/1947 and possession was handed over to the owner. The property was re-requisitioned under the Act V of 1947 and possession was made over to the Home (Police) Department on 05/02/1959. Against this order of requisition a writ petition was filed. The writ petition was disposed of in terms of an order of this Court on 17/09/1985 observing that regarding the covered portion, requisition should be continued for a further period of six month after which the requisition would be quashed. However, if the Government intended to continue to use the premises for a longer period, they were at liberty to take up proceeding under the Land Acquisition Act, 1894. After expiry of six months, they should deliver possession to the writ petitioners immediately unless such proceedings are initiated within such time. An appeal was preferred and the Appellate Court modified the order in part holding that the judgment would not stand in the way of the authorities for acquisition of the same for public purpose.

On 25/04/1986, the owners filed another writ petition challenging the proceedings in respect of the said premises under West Bengal Act II of 1948 wherein an interim order restraining the Government from serving any order without the leave of the Court was passed. On 25/07/1986 an order of derequisition in terms of the order of this Court was passed and issued by the

Government of West Bengal. On 30/07/1986, Defendant no. 3 passed order intimating that the premises had been derequisitioned and possession would be handed over to the owners on 02/08/1986. Again the land was re-requisitioned under the West Bengal Act II of 1948 in terms of an order dated 31/05/1986 with leave of the Court and the land was not handed over. This order was challenged by the Plaintiffs. Single Bench of this Court quashed the requisition. On appeal, being FMAT 2224 of 1987 the Division Bench approved the acquisition and the vacant land upto the extent of 15 ft. adjoining the building; the remaining part of the vacant land was to be released. In compliance with the order of the Division Bench, vacant portion of the land was handed over. In order to complete the proceeding of acquisition of the residual area, notice under Section 5 (i) & 5 (iii) of the Act II of 1948 was issued to the Plaintiffs inviting claims. The aforesaid notices under Section 5 of the West Bengal Act II of 1948 was again challenged in a writ proceeding. These notices were quashed and the Government was asked to deliver back the possession. Another writ petition was filed by the Plaintiffs praying for fixation of rent in respect of the vacant land. The writ petition was allowed and the Government was directed to fix and pay rent compensation within a period of four months from the date of communication of the order dated 18/08/1993.

In compliance with the order passed in FMAT 2224 of 1987, a notification under Section 4 of the Land Acquisition Act 1894 was published on 21/12/1994 and a declaration under Section 6 of the Act was published on 07/08/1995. These notifications were again challenged by the Plaintiffs. The matter went upto the Supreme Court of India, being Civil Appeal No. 2757 of 2006. On application filed by the Plaintiff, Government was directed pay Rs.5,00,000/- as interim measures. Thereafter, on different dates, the

Supreme Court of India directed the Defendants to pay various amounts and the same was paid. It was made clear that the quantum of damages is subjected to determination by any other forum. In terms of the Judgment and Order dated 13/11/2006, Civil Appeal was dismissed upholding the order of the Division Bench. In the circumstances, the suit property stood vested from 14/08/1986. On 15/11/2007 compensation was determined as Rs.52,92,521.53p and the Plaintiffs received the amount of compensation.

It is further contended that in terms of the Order of the Division Bench in FMAT No. 2224 of 1987 the property in question, namely, the building with 15 feet vacant land at the back of premises no. 4, Pretoria Street, Kolkata-700071 stood vested with the Government of West Bengal from the date of notification under Section 4 (1A) of the West Bengal (Requisition & Acquisition) Act, 1948 dated 14th August, 1986. The Defendants contended that in terms of various orders of the Supreme Court of India, admittedly the Plaintiffs received a sum of Rs.1,28,20,000/-. It was clarified by the Supreme Court of India that such payments were on *ad hoc* basis subject to final determination in the appeal. Apart from this amount this sum of Rs.1,28,20,000/-, the Defendants paid a sum of Rs.95017/- on *ad hoc* basis calculated at a rate of Rs.777/- being the amount of rent compensation determined on 5th February, 1959 and for the period from the month of June 1986 to the month of August 1996 which had been received by the Plaintiffs' Advocate on 21/08/1996.

It is also contended that since the premises was vested in favour of the Defendants no rent or occupation charge is payable to the Plaintiffs from 14/08/1986 although there was a direction of the Supreme Court of India of adjustment of the *ad hoc* payments against compensation for acquisition of

the property. No such adjustment was made. Therefore, the Defendants raised a counter-claim for recovery of (Rs.1,28,20,000/- +Rs.95017)=Rs.1,29,15,017/- along with interest at a rate of 12 per cent per annum. The Defendants, in terms of the counter-claim prayed for a decree for a sum of Rs.1,29,15,017/- along with interest at a rate of 12% per annum from the respective dates or payment till date, along with ancillary reliefs.

On the basis of rival pleadings, the following issues were framed:

1. Is the suit maintainable in its present form?
2. Are the claims of the parties barred by limitation?
3. Are the Defendant liable to pay to the Plaintiff damages/rental compensation for use and occupation of the western portion of premises no.4, Pretoria Street, Kolkata-700071, comprising an area of 15 kottahs 5 chittacks and 14 sq. ft. of land with 2-storied building and outhouses standing thereon from 01/06/1986 till 30/06/2007.
4. Are the parties entitled to have the relief sought for?
5. To what other reliefs are the parties are entitled.

Issues No. 1 – 5

Issue of maintainability of the suit in the instant case cannot be decided in isolation since it is embedded in the substance of the fact. It was argued by the Learned Counsel for the Plaintiff that compensation claimed in the suit is of the nature of rental compensation for long occupation distinct from the compensation payable under the Land Acquisition Act, 1894 under which compensation is payable

on account of acquisition of the title. On the other hand, the Learned Counsel for the Defendant that the nature of compensation prayed for by the Plaintiff comes within scope and ambit of Section 23 of the Land Acquisition Act, 1894 (in short “the “Act of 1894”) which can only be decided by the authority constituted under the Act of 1894. Rival contentions demand further and detailed understanding of arguments on points and counter points and appreciation of evidence, facts and applicable laws. All the issues are taken up together for consideration and adjudication, therefore.

Neither of the Learned Counsels raised the issue of limitation or argued on that. Therefore, this issue is not taken up for adjudication.

Argument for the Plaintiffs:

The first leg of argument of Mr. Bera, the Learned Counsel for the Plaintiff was that the West Bengal Land (Requisition and Acquisition) Act, 1948 (in short the Act II of 1948), was enacted by the State of West Bengal for requisition and speedy acquisition of lands for certain purposes, mentioned in the Act. Initially the Act II of 1948 was valid upto 31/03/1951. Then the life of the Act was extended from time to time. By the West Bengal Land (Requisition and Acquisition) Re-enacting Act XV of 1977, the Act II of 1948 was re-enacted in the year 1977. By the West Bengal Land (Requisition and Acquisition) (Amendment Act IV of 1989), the life of the Act was re-enacted and extended upto 31/01/1994. Thereafter the West Bengal Land (Requisition and Acquisition) (Amendment) Act 1994 was published. By this re-enacting Act, life of the Act II of 1948 was extended whereunder and whereby till 31/03/1997. By this Amendment Act, Section 3 of the Act II of 1948 was omitted, and power of requisition was withdrawn w.e.f. 01/04/1994. But prior requisitions were not affected.

The West Bengal Land (Requisition & Acquisition) (Amendment) Act 1996 was passed to amend the Act II of 1948, furthermore. Section 7A was inserted. Under this amendment, the Collector should make award within 3 years from the publication of notice, in case of failure of which the notice would lapse. Proviso stated that where a notice had been published more than 2 years before commencement of the Amendment Act of 1994, award should be made within 1 year. In computing the period of three years or one year, as the case may be, period during which any action or proceeding was taken in pursuance of the said notice and the notice had been stayed by any order of a Court having jurisdiction, should be excluded. This Amendment Act of 1996 came into effect on and from 07/04/ 1996. By virtue of Section 3 of the Amendment Act 25 of 1996, i.e. under Section 7A of the Act of 1948, the Collectors were required to declare the award within three years from the date of notification under Section 4 (1a) of the Act and if such award had not been made within the said period, the notice should lapse. In other words, the proceeding for acquisition would lapse. Under Section 7A, in cases where the said notice had been published more than two years before commencement of the West Bengal Land (Requisition & Acquisition) (Amendment) Act 1994, an award should be made within a period of one year from the date of commencement of that Act. This means notices which were published two years before 31/03/1994, award must be passed in respect of them on or before 31/03/1995, in case of failure of which the process of requisition and acquisition would lapse.

It is further submitted that the Act II of 1948 was a temporary statute, extended from time to time. After lapse of time, it was effaced from the statute book, w.e.f. 01/04/1997.

Subsequently, the Government of West Bengal enacted the Land Acquisition (West Bengal Amendment) Act VII of 1997, w.e.f. 01/04/1997. By the said West

Bengal Amendment Act of 1997, the provisions of the Land Acquisition Act, 1894 was amended in its application to the State of West Bengal. Sections 9, 11A, 23 (1A) and 54 were introduced. Purpose of the amendment was to complete the requisition and acquisition proceedings which were initiated under the Act II of 1948, but could not be made complete by publishing award within 31/03/1997. First proviso to Section (3A) of Section 9 which was inserted by the Amendment Act provided that notice under sub-section (3A) shall be the date of reference for the purpose of determining the value of land under the Act. The first proviso to sub-section (3B) of Section 9 of the Amendment Act provided that the date of publication of the notice under sub-section (1a) of the Section 4 of the Act II of 1948 shall be the date of reference for the purpose of determining the value of land under the Act. Therefore, as per the said proviso, the valuation of acquired lands would relate back to the date of notification under Section 4 (1a) of the Act II of 1948 inspite of the fact that acquisition could not be made complete and the notification lapsed by operation of Section 7A of the Act of 1996. Mr. Bera referred to **Sabitri Devi & Ors. Vs. State of W.B [2002 (III) CHN 108]** where Single Bench of this Court decided that any proceeding under a lapsed statute finds its natural death and could not survive after 31/03/1997; that a notice under Section 4 (1a) of a lapsed statute cannot be saved or survived after death of the statute; that vesting under Section 4 (1A) could not be saved or could not have survived after 31/03/1997 and that vesting under Section 4(1A) of Act II of 1948 could not continue on lapse of notice under Section 4 (1A) of the lapsed Act II of 1948. It was further held that where notices under Section 9 (3A) or 9 (3B) of the Land Acquisition Act 1894 (West Bengal Amendment) had not been issued whether the notices under Section 4(1A) was surviving or not on 31/03/1997 by reason of lapse of the Act II of 1948, not only the requisition but also the acquisition would lapse irrespective of the principle of once vested cannot be divested. An appeal was filed against the Judgment but the appeal was dismissed upholding the decision of

the Single Bench, **[2011 (3) CHN (CAC) 555]**. Special Leave Petition filed before the Supreme Court of India was also dismissed. Thus decision on the point that the vesting under Section 4(1A) of the Act II of 1948 could not continue on lapsed notice under Section 4(1A) of the Act II of 1948 reached finality.

In the context of the present case, Mr. Bera argued that the notification under Section 4 (1A) of the West Bengal Land Requisition & Acquisition (Amendment) Act 1994 came into effect on 31/03/1994. Therefore, the notification under Act II of 1948 had been published more than two years back before commencement of the Amendment Act 1994. Therefore, in view of proviso to Section 7A of the West Bengal Land (Requisition & Acquisition) (Amendment) Act 1996 the award ought to have been declared within one year from 31/03/1994, otherwise the notice would stand lapsed. Period of stay should be excluded. In this case, without declaring award under the Act II of 1948, the government switched over to the Land Acquisition Act 1894 to complete acquisition. Therefore, it is concluded by Mr. Bera notification under the Act II of 1948 lapsed and the property was divested w.e.f. 16/08/1986. The Plaintiff, therefore, is entitled to rent of the land in the form of compensation for unauthorized occupation by the Government since then. It is further submitted that damages/rental for use and occupation of the premises for the period stretching from 01/06/1986 to 10/09/2007 was not covered by the award declared under Section 11 of the Land Acquisition Act 1894. Therefore, the instant suit claiming compensation for the said period is maintainable.

The second leg of argument of Mr. Bera was on quantum of compensation, damages/rental for use and occupation of the premises from of 01/06/1986 to 10/09/2007.

Mr. Bera argued that notification dated 13/12/1994 under Section 4(1) of the Land Acquisition Act 1894 for acquisition of the western part of the premises no. 4,

Pretoria Street, Kolkat-700007, measuring an area of 0.2423 acres of land was published in the Calcutta Gazette Extraordinary on 21/12/1994. The notification was challenged and Single Bench of this Court set aside the said notification, by order dated 02/12/1996. An appeal was preferred by the State. The Division Bench of this Court set aside the order of the Single Bench in terms of the Judgment dated 10/10/2002. Thereafter, a Special Leave Petition (Civil) No. 6373 of 2003 was filed before the Supreme Court of India. In course of hearing and during pendency of the Special Leave Petition, the Supreme Court of India considered the issue of rental compensation, asked and called for valuation report and directed the State from time to time, in terms of various interim orders, to pay rental compensation. The State paid, on total, a sum of Rs.1,28,20,000/- to the Plaintiffs, towards rental/damages for use and occupation of the premises for the period from 01/06/1986 to 13/11/2006 when the Special Leave Petition was disposed of.

After disposal of the Special Leave Petition, the suit was proceeded with. Plaintiff no. 1 deposed as P.W. 1 and one Valuer Mr. Prabir Kumar Chaudhuri deposed as P.W. 2, adduced in evidence his valuation report, which was marked as Ext. L. The valuation report being Ext. L assessed compensation upto 30/06/2007 to the tune of Rs.10,59,00, 000/-. The Defendants adduced oral evidence of one Sandip Kumar Deb who was examined as D.W.1. He was a valuer and challenged the valuation report of P.W. 2. However, in cross-examination D.W. 1, in his evidence also admitted that valuation of structure during the relevant period in the year 2007 at Pretoria Street would be Rs.5,500/- per square feet. In course of cross-examination, D.W. 1 admitted that valuation assessed by P.W. 2 at a rate of Rs.6000/- per square feet was correct. However, the said D.W. 1 did not submit any valuation report. It was submitted by Mr. Bera that the valuation report, being Ext. L, therefore, should be accepted as piece of evidence regarding quantification of

damages and/or rental for use and occupation of the premises from 01/06/1986 to 31/07/2007.

It is further submitted that in the plaint damages have been claimed upto 30/06/2007. But the Plaintiffs are entitled to get damages till 10/09/2007. So, the Plaintiffs are further entitled to get damages from 01/07/2007 to 10/09/2007 at the same rate, as assessed by the valuer. Therefore, according to Mr. Bera, the Plaintiffs are entitled to get compensation, in total, of Rs.9,35,07,542/-.

The next limb of argument of Mr. Bera was that compensation payable under the Act of 1984 was for extinction of title and on account of acquiring title of the land in question by the Government. But the present claim is on account of long occupation by the Government and the claim is basically demand of rent. The Act of 1894 left no scope for deciding or quantification of the said component. Only civil court can decide on the issue. Therefore, the instant suit inspite of receiving of compensation under the Act of 1894, is maintainable.

Argument of the Defendant:

The first leg of argument of Mr. Dutta was that the property stood vested in the State Government on and from 14/08/1986. Thus the Plaintiffs are not entitled to any rentals / damages from the date of vesting. The Plaintiffs had admitted that they have received rent compensation for the period upto 31/05/1986. Furthermore on or about 15/11/2007. Compensation for acquisition of the said property was determined by the Land Acquisition Collector, Kolkata at Rs.5,29,2521.53p. The amount was duly received and accepted by the Plaintiffs. The Plaintiffs did not challenge the award of the Land Acquisition Collector, Kolkata.

Admittedly, on 03/12/1994, notice was issued by the Defendants under Section 4 of the Land Acquisition Act, 1894 on 03/06/1995. When the Single Bench

of this Court in W.P. no.13522 (w) of 1995 allowed the writ petition quashing the notification, the State preferred appeal in the Division Bench when the order of the Single Bench was set aside in FMAT no. 6 of 1997, in terms of the Judgment dated 10/10/2002.

Special Leave Petition was filed in the Supreme Court of India against the Order passed by the Division Bench of this Court. The Supreme Court of India in C.A. No. 6756 of 2003 upheld the Judgment of the Division Bench in terms of the Judgment dated 13/11/2006 giving liberty to the Plaintiffs to claim their dues, if any, before the appropriate forum. It is submitted by Mr. Dutta that in view of the order passed by the Supreme Court of India, there cannot be a dispute that the property stood vested in the government w.e.f 16/08/1986.

The second leg of argument of Mr. Dutta was that the Plaintiffs cannot claim any rental/damages by filing a civil suit. The appropriate remedy lies under the Land Acquisition Act 1894. In the event the Plaintiffs are aggrieved by the Award dated 15/11/2007, passed by the Land Acquisition Collector, they ought to have challenged under Section 18 of the Land Acquisition Act 1894. Even if the Plaintiffs are aggrieved that they were not awarded compensation for the period prior to 01/03/1995, the same should be challenged by the Plaintiffs in terms of the Land Acquisition Act 1894. In fact after receiving award, which has been calculated from 03/01/1995, the Plaintiff cannot have any claim for the period after 03/01/1995 and any such claim is baseless.

It is further argued that in the Land Acquisition Act 1894 is a complete code and civil court have no jurisdiction in going into the matter provided under the Act. Mr. Dutta relied upon:

State of Bihar v. Dhirendra Kumar, [(1995) 4 SCC 229]

Laxmi Chand v. Gram Panchayat, [(1996) 7 SCC 218]

Bangalore Development Authority v. Brijesh Reddy, [(2013) 3 SCC 66]

According to him, the suit is, therefore, not maintainable.

The third limb of argument of Mr. Dutta was that evidence of P.W. 2 on valuation is not acceptable. He had not visited the property and had no access to the property. He had relied on reports of other persons. His report was not based on his personal knowledge or inspection. In fact, D.W. 1 completely demolished the Valuation Report (Ext. L) prepared by P.W. 2. The Plaintiffs have also failed to prove the quantification of the rentals/damages, as worked out by them.

The fourth limb of argument was that in terms of various interim Orders passed by the Supreme Court of India, the Defendants paid various amounts as admitted by the Plaintiffs. The Supreme Court of India upheld the order of vesting and also directed the interim payments made by the Defendants to the Plaintiffs should be adjusted while making payment of compensation under the award dated 15/11/2007. Adjustment was not made and vesting of the land w.e.f. 16/08/1986 was confirmed. Therefore, according to Mr. Dutta, the Plaintiffs are liable to refund the interim payment and, therefore, the counter-claim should be allowed.

Decision:

Certain facts are admitted and more or less adjudicated upon.

In the year 1943, the property at premises no. 4, Pretoria Street, Kolkata – 700071 was requisitioned by the Government of West Bengal under the Defence of India Rules. The Government started using this land and as well as the ground floor of two storied building. On 28/12/1947, the land was derequisitioned by the Government. Again by an Order dated 13/01/1959, the property was requisitioned

under Section 3(1) of the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947.

In the year 1982, the Plaintiffs purchased the land. After purchasing the land, the Plaintiffs filed a writ petition in this Court, challenging the order of requisition dated 30th January, 1959. After adjudication by a Single Judge, the matter went to the Division Bench. Division Bench disposed of the matter in terms of the Judgment and Order dated 12th December, 1985. The result of adjudication was that the requisition remained valid for six months from 12/12/1985 and the requisition in respect of the garden was put to an end with a direction to hand over the possession thereof to the Plaintiffs and liberty to acquire at the same time.

Apprehending acquisition of the said land, under the provisions of the West Bengal Land (Requisition & Acquisition) Act, 1948, the Plaintiffs filed the second Writ Petition C.R. No. 5025(w) of 1986.

The Government once again requisitioned the said land under Section 3 (1) of the West Bengal Act II of 1948 by making an order dated 31/05/1986. The Government continued to use the requisition land measuring more or less .2542 hector for the same purpose as before. Thereafter, for acquiring the land property, the Government published a notice dated 14/08/1986, on 16/08/1986, in the Official Gazette under Section 4(1a) of the Act of 1948.

The Plaintiffs challenged the order and notice under Section 3(1) and Section 4(1a) of the Act II of 1948 in the third unit petition being Civil Rule No. 8407(w) of 1987. The Single Bench set aside the order and the notice. An appeal was preferred (FMAT 2224 of 1987) which was disposed of by the Division Bench on 07/09/1990, setting aside the order passed by the Single Bench. The order of acquisition of vacant land at the back of the building beyond fifteen feet at the back side was annulled.

Consequently and pursuant to the Order, on 12th June, 1991, physical possession of the land and beyond fifteen feet of existing building was delivered back by the Government to the Plaintiffs. Thereupon a notice under Section 5 (3) of the West Bengal Act II of 1948 bearing dated 14/09/1992 was given by the First Land Acquisition Collector, inviting the Plaintiffs to make their respective claims for compensation for the said land already acquired by the Government in terms of the notice under Section 4 (1a) of the Act of 1948 dated 14/08/1986.

By Order passed in W.P. No. 3799 of 1992, the requisition Order dated 30/04/1959 was set aside together with a direction to the State to deliver vacant possession of the land and the building to the Plaintiffs within six months. By a subsequent Order dated 08/07/1994 passed in the W.P. No. 3798 of 1992 the previous Order dated 18/08/1993 was modified to the extent that the order would not prevent the Government from issuing fresh notice in terms of the order of this Court within a period of six months.

On 21/12/1994, Government published a notification dated 13/12/1994 under Section 4 of the Land Acquisition Act, 1894 purporting to acquire the land or property for public purpose. After hearing the Plaintiffs, a declaration under Section 6 of the Act I of 1894 was made by the Competent Authority on 23rd June, 1995. It was published in the newspaper on 6th and 7th July, 1995 and in the Official Gazette on 07/08/1995.

In the conspectus of facts, the sixth writ petition was filed on 02/08/1995 by the Plaintiffs. This writ petition was filed, initially challenging the notification dated 13th December, 1994 published under Section 4 of the Land Acquisition Act, 1894 and subsequently, challenging the declaration under Section 6 of the Act of 1894 was added. The Single Bench, in C.O. No. 13522(w) of 1995, set aside notice under Section 4 dated 13/12/1994 and the declaration under Section 6 dated 23/06/1995,

both under the Land Acquisition Act, 1894, in terms of the Order dated 02/12/1996. The State preferred an appeal being FMAT No. 06 of 1997. The Division Bench disposed of the appeal by Order dated 10/10/2002 setting aside the order passed by the Single Bench. The Division Bench noted that the building and vacant land at the back of the building to the extent of fifteen feet had already been vested absolutely in the State Government on and from 16th August, 1986. A Division Bench while passing the order noted and observed that the Government possession of land never became illegal or unauthorized by operation of law. The Division Bench upheld the notification. It was also in the order of the Division Bench that there was an unbroken and continuous valid requisition which had been ultimately merged in the acquisition notice dated 14th August, 1986. Therefore, whatever rent compensation or damages the Plaintiffs were entitled in law they were always and they were at liberty to claim the same from the Government in accordance with law. Thus, liberty was given to the Plaintiffs to claim their dues before the appropriate forum in accordance with law.

A Special Leave Petition was preferred before the Supreme Court of India against the order passed by the Division Bench. The Supreme Court of India in course of hearing of the Special Leave Petition which was numbered as Civil Appeal No. 6756 of 2003 allowed payment of rent compensation to the present Plaintiff from time to time. Valuers were appointed and valuations were made. The Defendants/State paid various amounts so directed, to the Plaintiffs. In terms of final Judgment dated 13/11/2006, the Supreme Court of India dismissed the Special Leave Petition upholding the Order passed by the Division Bench dated 10/10/2002.

It is clear from the conspectus of facts, as stated above, that the State did not issue any notification within six months under the Act II of 1948, as contemplated in the Order dated 08/07/1994. Government did not pursue acquisition of land under

1948 Act. Once the time frame of six months lapsed, there was no acquisition or retaining of land under the 1948 Act. Subsequently, notifications were issued under Sections 4 and 6 of the Act of 1894 and acquisition of land under the said Act of 1894 was upheld by the Supreme Court of India. In view of that there cannot be and is not any living dispute of the legality and validity of acquisition. In view of this the whole gamut of argument made by Mr. Bera on applicability or non-applicability or contextuality of the 1948 Act becomes irrelevant. In fact it was noted in the Judgment of the Supreme Court of India dated 13/11/2006 –

“It was asserted by the appellant that having abandoned the earlier proceedings initiated under the West Bengal Act 2 of 1948, as was evident from the fact of publication of the impugned Notification under Section 4 read with Section 4 of the Act No. I of 1894, the State Government had lost the right to retain the possession of the land.”

The Government abandoned any proceeding or did not pursue any proceeding of acquisition of land under 1948 Act. Therefore, the argument made by Mr. Bera cannot be accepted.

Division Bench clearly held which was upheld by the Supreme Court of India that possession of the State was never illegal. Therefore, the State is not liable to pay any mesne profit or other damages for illegal or unauthorized occupation of the suit premises. Claim of the Plaintiffs is basically rent compensation. That had been allowed by the Supreme Court of India from time to time subject to adjustment to be made at the time of final payment of rent compensation. However, the adjustment was not made at the time of payment of compensation to the Plaintiffs.

The foundation of Mr. Bera's argument was that compensation payable under the Act of 1894 are different from rent compensation claimed by the Plaintiffs; a distinction was attempted to make between liability to pay rent and other money on account of long and continuous possession of the suit premises by the State and compensation payable under the Act of 1894 which is basically a compensation for snapping of title or in other words, extinction of title of Plaintiffs. Mr. Bera tried to impress on the point that two claims are different and rent compensation cannot be decided in the same breathe with the compensation payable under the Act of 1894 or can be adjudicated by the authority established under the Act of 1894. To understand this finesse of argument it is necessary to look into the West Bengal Amendment of Section 23 of the Land Acquisition Act, 1894. Necessary for present context may be quoted here:-

*"13. **WEST BENGAL**-In section 23 in sub-section (1),*

(1) (i) in clause "fifthly" the word "and" at the end shall be omitted and deemed always to have been omitted:

(ii) in clause "sixthly" for the words "possession of the land, and shall be deemed always to have been substituted;

(iii) after clause "sixthly" following clause shall be deemed always to have been inserted, namely,-

"seventhly the loss of earning if any, caused to the person interested in consequence of the acquisition of the land, where earning was derived directly from such land.";

In sub-section (IA) of section 23 of the principal Act, the following proviso shall be added:

"Provided that in respect of the acquisition of the land referred to in sub-section (3A), and sub-section (3B), of section 9, in addition to the market value of the land, the court shall in every case award an amount calculated at the rate twelve per centum per annum on such market value for the period commencing on and from the date of taking possession of the land to the date of the award of the Collector."-West Bengal Act VII of 1997 (2-5-1997)"

The West Bengal Amendment provided for loss of earning and other components of compensation for the period commencing on and from the date of taking possession of the land to the date of award of the Collector. West Bengal amendment of Section 23 widened the ambit of compensation. Unauthorized or illegal occupation of the suit premises by the State could have opened space for the Plaintiffs praying for appropriate compensation for such illegal occupation. Unless it was so, the Plaintiffs remedy lies under the Act of 1894. In this case the possession of the State has been adjudicated as legal and authorized. The Act of 1894 as amended in West Bengal provided scope for claiming compensation. Rent is more compensatory for prolonged legal occupation by the State which can be considered under the Land Acquisition Act, 1894. Therefore, any further claim of the Plaintiffs, as prayed for, is nothing but one of the components of compensation contemplated and envisaged in Section 23 or other parts of Act of 1894. Once the Plaintiff is dissatisfied or aggrieved on payment of compensation, the only authority where he can approach is a Land Acquisition Court constituted under the Act of 1894. In case, the occupation of the Government had been illegal or unauthorized civil court could have entertained suit for compensation which might be prayed for such illegal occupation. This is not a case. Therefore, the Civil Court has no jurisdiction to allow compensation to the Plaintiffs, as prayed for. Accordingly, an inevitable conclusion is that the plaint case is not maintainable as this Court has no jurisdiction to allow such compensation.

Counter-claim raised by the State is also the amount paid by the State as rent compensation. Since the amount already paid had not been adjusted as directed by the Supreme Court of India the same is claimed to be refunded in this suit. It has already been decided and concluded that this Court has no jurisdiction to consider claims on account of rent compensation and other compensation related to acquisition of land on the same logic and reason the counter-claim raised by the State cannot be considered by this Court having no jurisdiction to do that.

In nutshell, for reasons stated above, both the plaint case and the counter claim are dismissed and the suit is disposed of accordingly.

(Sugato Majumdar, J.)