

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CO 2890 OF 2025

WITH

SHRACHI BURDWAN DEVELOPERS PVT.LTD.

VS

ABDUL ALIM & ORS.

WITH

CO 2892 OF 2025

WITH

CO 3194 OF 2025

For the Petitioner : Mr. Arindam Banerjee, Sr. Adv.
Mr. Swarajit Dey, Adv.,
Mr. Amit Kr. Nag, Adv.
Mr. Partha Banerjee, Adv.
Ms. Rishita Sarkar, Adv.

For the Opposite Party no. 1 : Mr. Gopal Chandra Ghosh, Sr. Adv.
Mr. Partha Pratim Roy, Adv.
Mr. Rajkumar Gupta, Adv.
Mr. Chandan Mondal, Adv.
Ms. Poulami Chakraborty, Adv.

For the Opposite Party No. 5 : Mr. Sarosij Dasgupta, Adv.
Mr. Saptarshi Datta, Adv.
Ms. Srinjita Ghosh, Adv.
Mr. Pourush Kanti Pal, Adv.
Mr. Debaut Hore, Adv.
Mr. P.K. Pal, Adv.

For the Opposite Party No. 2 and 3 : Mr. Siddhartha Banerjee, Sr. Adv.
Mr. Dyutiman Banerjee, Adv.
Mr. Debjit Dutta, Adv.
Mr. Ayanava Das, Adv.

Last heard On : 06.03.2026

Judgement On : 11.06.2025

Uploaded On : 11.06.2026

CHAITALI CHATTERJEE DAS, J. :-

1. The three revisional applications are heard analogously since all are interrelated with each other between the same parties. The present petitioner filed revisional applications being C.2890 of 2025, challenging the order no. 128 dated 29.7.2025 passed by the learned Executing Court, dismissing the application filed under Section 47 of CPC being Misc. case no. 60 of 2023, C.O no. 2892 of 2025, challenging the order No. 129 dated 29.7.2025 passed in Money Execution case no .12 of 2012 and the order no. 132 dated 6.8.2025 passed in Money Execution case no.12 of 2012 of disposal of execution process.

The case of the petitioner

2. 254 acres of land was requisitioned by letter dated 12.12.2003 by the Burdwan Development Authority (henceforth to be described as BDA) for acquisition of such land from 4 Mouzas through the Land Acquisition Collector, Burdwan and pursuant to such requisition the Government issued 12 separate Notifications under section 4 of Land Acquisition Act, 1894 notifying the purpose of acquisition of land and in the month of May 2005 issued the notifications equivocally declaring that the acquisition was for setting up of development of a Satellite Township at Burdwan.
3. The said notice was challenged by an Association of land owners being Paschim Burdwan Krishi Kalyan Samiti, a registered group of land losers by filing a Writ petition which was dismissed on 23/2/2007. On December, 2005, and January 2006 notification was issued under section 6 of Land Acquisition Act.

4. In between on March 8, 2006, a Memorandum of Agreement was entered into between BDA and Bengal Shrachi and in terms of the relevant terms and conditions of the said agreement on 25th July, 2006, Bengal Shrachi deposited Rs.1,91,75,810/- with BDA for paying the cost of acquisition in 4 L.A cases. BDA duly deposited the said cost as received from its Private Partner, with the Land Acquisition Collector, Burdwan from time to time. Bengal Shrachi later on decided to develop the said land through the Special Purpose Vehicle, Shrachi Burdwan Developers Private limited, one of its subsidiary align with one investor namely Xander Investment Holding VI Ltd A (Mauritius based company) incorporated for the purpose of making investments in real estate sector in India with the knowledge and consent of BDA .

5. Land Acquisition collector duly took over the possession of the land from 2005 to 26th February, 2007 and on 26th February, 2007 BDA handed over possession of 284.32 acres of land to Bengal Shrachi and on 15th March, 2007 Bengal Shrachi handed over possession of 248.32 acres of land to the petitioner in accordance with Development Rights Assignment Agreement dated 20th October 2006. The balance 6.420 acres of land were handed over by BDA on 5th September, 2008. Over this acquisition process 57 reference cases were initiated under Section 18 of L.A Act and 37 cases travelled up to this High Court from the order passed by the reference court and such appeals were pending. The petitioner was informed about the reference case only on 28th July 2010 when they were intimated by BDA. In the said reference cases under section 18 of L.A. Act filed by the owners of land, the Learned judge enhanced the amount of compensation after assessing the market price of the

acquired land of Rs. 35,000/- per satak and directed the proforma parties to pay to the opposite parties compensation at the enhanced rate together with interest at the rate of 12% per annum and other awarded amount. The petitioner was never impleaded in the said proceeding and the award was passed beyond their knowledge.

6. In terms of the Memorandum of agreement executed in between BDA and Bengal Shrachi on 18.3.2006, Bengal Shrachi entered into development rights of assignment agreement with Shrachi Burdwan Developers Private Limited on 20.10.2006, during pendency of the writ petition 16280(W) 2005. Meantime in terms of 24 awards and decree passed in the reference cases, BDA asked Bengal Shrachi for the payment of enhanced amount. Bengal Shrachi challenged the same by filing a writ petition, being W.P No. 9778(w) 2012. The decree involved in the present case was put up into execution being Money Execution case no. 12 /2012 and on 27.8.2012 an appeal was filed against the said decree being FAT 522/2012 by BDA on 19.10.12. On 13.6.2016, the said appeal was dismissed for non-compliance of order. In the Writ petition, so filed being WP. 9778(w) 2012, the learned Single Judge held that Shrachi Burdwan is a 'person interested' under Section 3 (b) of the Act and the "necessary party" as well as 'proper party' in the reference proceeding and set aside 4 decrees passed by the reference court. In accordance with such order, the present petitioner filed an application under Order 1 Rule 10(2) CPC in the reference case being L.A. case no. 40 of 2010 which was dismissed by the learned Additional District Judge, 1st Court at Burdwan on 23.8.2017. Challenging the order of the learned Single Judge, an appeal was filed before the Division

Bench of this court by the land losers of four cases being MAT no. 513 of 2017, corresponding to FMA 887 of 2019. On 11.9.2019, the Division Bench of this court allowed the said appeal filed by the land losers and set aside the order dated 16.2.2017 passed by the learned Single Judge in W.P No. 9778 (W) 2012 with a cost of ₹2,00,000/- to be paid by Shrachi Burdwan. The matter travelled up to Hon'ble Supreme Court by filing a Special Leave Petition on 31st November 2019.

The present petitioner also filed an application under Section 151 CPC before the Executing court on 14.11.2017 in the M. Execution case no.5/2016 for impleadment and such prayer was refused by the Learned Executing Court. Against the order dated 23.8.2017 passed in Execution case the present petitioner filed C.O no. 3809 of 2017.

7. The learned Single Bench of the High Court allowed all the revisional applications filed by the State of West Bengal, BDA and Shrachi Burdwan by a common order dated 26.2.2020 holding that the award passed in all the Reference proceedings in connection with which respective orders in execution petition challenged in the petition are null and void in the eyes of law, in view of non-joinder of necessary party. The SLP was filed against such common Judgement and order dated 26.2.2020 and it was dismissed and confirmed the judgement and order of the Learned Division of the High Court in FMA887/2019 and set aside the order of Learned Single Bench passed in CO 1232 of 2018 and directed the Executing court to proceed with the execution process. A contempt petition was filed by the present respondent no.1 against the collector / DM in L.A case no. 21 of 2010 for non-compliance of the

Executing Court's order dated 29.8.2018 and 12.9.2018 and the Rule was issued on 13.5.2025. Shrachi Bardhaman preferred SLP challenging the Rule issued by the learned contempt court, which was disposed of on 16.5.2025, directing Shrachi Burdwan to move before High Court without interference to the order impugned.

- 8.** On 21.5.2025, High Court discharged the Rule issued against the collector in the contempt proceeding upon deposit of the decretal amount of Rs. ₹2, 70, 80, 540/- before the executing court and after seeking unconditional apology by the contemnor. The state of West Bengal through the Special Land Acquisition Officer conveyed it's no objection to the learned Contempt court and also to the petitioner and decree holder by a letter dated 20.5.2025. In that case the decree holders were allowed to withdraw the deposited amount. An objection was then raised by Shrachi Burdwan under Section 47 of C.P.C being Misc case no. 60 of 2023 against the executability of the decree in M.Execution case no. 12 of 2012, impleading only one Awardee namely Abdul Aleem that is petitioner no.2. The learned Executing court meantime permitted the decree holders on 30.7.2025 to withdraw the deposited decretal amount and BDA did not raise any objection. The decretal amount has been presently handed over and deposited to bank account of the respective respondents which has been duly acknowledged. The petitioner challenged the orders passed in the Misc. case filed under section 47 of the code of civil procedure and also against the order of dismissing the application under Section 47 CPC.

9. Under the above factual score, the argument advanced by Mr. Arindam Banerjee the learned Senior Advocate representing the petitioner in all the three revisional applications, are as follows;

Submission made on behalf of the petitioners

10. It is submitted that the petitioner herein being a Special Purpose Vehicle formed under PPP (public purpose, partnership) to be constructed to be a representative of BDA, being a party to the proceeding under section 18 of the land Acquisition Act, 1894, and as such the petitioner is entitled to apply under section 47 of code of civil procedure for the decree to be declared void and inexecutable on the ground of non impleadment of Bengal Shrachi Developers Private Limited being a necessary party and “person interested” in disbursing compensation under Section 3(b) of the Land Acquisition Act, 1894. The learned Senior advocate in this regard relied upon the decisions relied on before the learned Single Judge court in WP9778 (W) of 2012, which are as follows. ***Himalayan Tiles and Marble (p) Limited versus Frangis Victor Coutinho (Dead) by LRs.¹***, paragraph 8 and 14, ***Neelagangabai versus State of Karnataka²***, ***Neyvely Lignite Corporation Ltd. Versus special Tahsildar (Land Acquisition.) Neyvely³***, paragraph 12 to 14, ***Hindu Kanya Maha vidyalaya Jind vs municipal committee, Jind⁴***, ***Santosh Kumar versus Central Warehousing Corporation, AIR 1986 SC 1164***, and lastly ***Peerappa Hanmantha Harijan (dead) by LRs vs state of Karnataka⁵***.

¹ (1980) 3 SCC 223

² (1990) 3 SCC 617

³ (1995)1 SCC 221

⁴ AIR 1988 SC 2139

⁵ (2015) 10 SCC 469.

11. The further point raised by the learned Senior advocate that section 47 of the Code of Civil Procedure, 1908 is not maintainable being void as the petitioner had not been made a party either before the Collector when the Award under Section 11 of the land Acquisition Act, 1894 had been made or before the reference court in the reference under Section 18 of the land Acquisition Act, 1894 initiated at the instance of the land losers. The order of dismissal of the application by the learned reference Court made under Section 47 of the Code of Civil Procedure held that the Section 47 would not be maintainable at the instance of the petitioner who is not a party to the reference proceeding under section 18 of the Land Acquisition Act, 1894, therefore, the learned reference court failed to exercise the jurisdiction vested in it under law in not deciding the merits of the petitioner's objection to the executability of the decree and hence liable to interfered with .

12. The alternative submission made by the learned senior advocate in his written notes of argument that even assuming that no proceeding under section 47 of the Code of Civil Procedure, 1908 could have been filed by the petitioner being not a representative of a party, the same could not result in the Misc. case being dismissed as 'not maintainable" on such score alone. It is strenuously argued that an objection as to the execution of a void decree can be made by any party at any time of the proceeding, and even by a person not being a party to the proceeding, in the event, the said decree has some adverse civil consequence on the third person. Therefore, when the objection raised regarding executability of a decree on the ground of nullity of the decree it was the duty of the Executing court to decide such question and mere wrong

captioning of the Misc. Case as a proceeding under Section 47 of the Code of Civil Procedure, 1908 would not denude the power of the Executing court or the obligation to decide on such issue of maintainability. Therefore, the Executing court manifestly failed to exercise the jurisdiction vested in it under the law in refusing to decide the petitioner's objection only on the ground that an application under Section 47 of the code of civil procedure, 1908 would not be maintainable at the instance of the petitioner.

13. The contention of the learned senior advocate regarding the question of the decree being null and void for non-inclusion of necessary party, it is always open to challenge the execution case even by that aggrieved party and relied upon the decision of **Anisminic Ltd vs Foreign Compensation Commission**⁶ where it was held by the majority of the House of Lords as follows;

a) Lack of jurisdiction can happen in many ways.

b) Whenever an authority is tasked with the obligation to decide a question, the resultant final order passed by the authority may be a nullity, not only in a case where the authority lacked in jurisdiction to decide such question, but also in a case where, at the entry level, the authority had the jurisdiction to decide such question, but during the course of its enquiry/adjudication, lost jurisdiction in view of, *inter alia*, the enquiry/administration being violative of the principles of Natural Justice, if a relevant and vital question is not considered by the said authority, and irrelevant or extraneous material is considered by the authority and in other instances of like nature. In such a case, the final outcome of the adjudicatory process, being the final order,

⁶ (1969) 2 AC 147

would be a nullity, notwithstanding the fact that at the initiation of the proceeding, the concerned adjudicating Authority had jurisdiction to consider and deal with the question.

14. It is further contended that the above law relating to the final outcome of an adjudicatory process being a nullity, even in spite of the fact that adjudicator concerned had jurisdiction to enter into the process of adjudication, is now part of the law applicable in India. In this regard relied upon the decision of Hon'ble Supreme Court in case of **Shri M.L Sethi versus RP Kapur**⁷, where the above mentioned passage from Anisminic Limited has been quoted. That apart in **Dhurandar Prasad Singh versus Jai Prakash University and others**⁸, it was held that executing court can allow objection under Section 47 of the Code to the executability of the decree if it is found that it is *void ab initio* and a nullity . Therefore, if the aforesaid principal applied to the facts of the present case, it would bring about the consequences that without impleading the petitioner as a party respondent, the award passed by the reference court is a nullity and therefore when the process of adjudication continued and ended without hearing the petitioner, it resulted in a gross violation of the principle of natural justice in so far the petitioner is concerned and therefore the final order/ decree is also a nullity.

15. In order to substantiate that how the present petitioner is coming within the definition of "person interested" it is argued that the compensation payment would ultimately to be borne by the predecessor of the petitioner, Bengal Shrachi, the petitioner herein and it's trite that even a person has to bear the

⁷ (1972) 2 SCC 427

⁸ (2001) 6 SCC 534

expenses for acquisition, he would become a “person interested” in the payment of compensation, simply on the age old principle that he who suffers an adverse Civil consequence whether in an administrative or judicial action, must be given an opportunity of hearing, leads to the inevitable conclusion that the exclusion of the petitioner from the array of parties and the continuous and completion of section 18 proceedings behind the back of the petitioner without affording the petitioner an opportunity of hearing in the matter, would amount to gross violation of principles of natural justice. Therefore, the final order though ultimately passed by the reference court which initially had jurisdiction to enter into the reference would be a nullity. Once it is alleged to be a nullity the person raising such allegation has the right to approach the executing court in a proceeding for execution of such null and void decree. The executing court has acted with gross failure in the exercise of jurisdiction vested in it under the law as it was the solemn obligation of the executing court to decide the question relating to nullity as raised by the petitioner, and the court ought to have looked into the substance and not the form of the objection. Accordingly, it would be necessary and interest of justice if the order passed by the executing court, refusing to decide the question raised by the petitioner, though objection to the executability of the decree was raised this court under Article 227 of the Constitution of India would be pleased to set aside the order impugned and direct the executing court to decide the said question on merit.

16. These Revisional applications arise out of interlocutory order passed in execution proceedings to the detriment of the petitioner and in the event the

lead matter whereby the final order dismissing the application under section 47 of the code of civil procedure has been challenged, is disposed of the outcome of the other revisional application would be likely to follow such outcome. Accordingly, it is submitted that the lead revisional application be allowed and the executing court be directed to consider the objection relating executability as raised by the petitioner on the ground of the ultimate final order of the reference “being a nullity, upon exercising the inherent power of the court under Section 151 of the Code of Civil Procedure.

Submission made by the Opposite Party no 2 & 3

17. On behalf of opposite parties no.2 & 3 the learned advocate, Mr Siddharth Banerjee raises the preliminary objection regarding the locus standi of Bengal Shrachi and Shrachi Burdwan on the ground of their absence in the acquisition proceedings and in determination of compensation under the Land Acquisition Act, 1894. It is the contention of the learned advocate that it was BDA who requisitioned for acquisition of approximately 254 acres of land from 4 Mouzas by letter dated 12.12.2003 through the land acquisition, Collector, Burdwan, expressly undertaking to bear the entire cost of acquisition and hence BDA stood as “requiring body”, while the state of West Bengal was the “acquiring authority” and neither Bengal Shrachi nor Shrachi Burdwan made any requisition whatsoever to the state; consequently, neither entity can be regarded as requiring body in law.

18. The state issued 12 notifications under section 4 of the Land Acquisition Act, 1894 declaring that the acquisition was for a public purpose and that public/ government expenses and hence it squarely falls under part II of the Act,

rendering part VII (acquisition for a company) wholly inapplicable as the act does not contemplate a hybrid or PPP mode of acquisition, combining parts II & VII. It is further contended that the declaration under Section 6 conclusively affirm that the lands were acquired for public purpose and at the public expense. Such declarations are final and binding upon the State, BDA and all downstream entities. The further stand taken by the Learned Advocate, that Bengal Shrachi was selected through a bidding process for implementation of its project and Shrachi Bardhaman is merely an assignee and Special Purpose Vehicle created under a Deed of Assignment dated 20.10.2006 for execution of the project. It is further argued that Shrachi Burdwan has unequivocally admitted that the land was acquired for the purpose of BDA and further in affidavit filed by Bengal Shrachi in WP No. 16280 (W) of 2005 it was categorically admitted that Bengal Shrachi acted only as an agent/developer /contractor of BDA therefore, any subsequent contradictory stand, demonstrably, mala fide and legally impermissible. That apart the award was declared during July–August 2006 and possession was taken on 26.2.2007 upon the land vested in the State, free from all encumbrances. The state handed over possession to BDA on the same date. Srachi Burdwan received the land much later under a registered lease of dated 27.8.2010, making it a post-acquisition allottee with no statutory or equitable right in the acquisition

19. It is further submitted by Mr. Banerjee, that when the land is acquired for public purpose, time is the essence in determination and payment of compensation and duty is cast on the state to pay requisite compensation to the landowner at the earliest. Any attempt made by Srachi Burdwan , in

collusion with the state and BDA, to interfere with such process constitute a direct infringement of the respondent's constitutional right under article 300 A and the idea of a welfare state which is a fraud upon the statute and landowner. After the award dated 21 May, 2012 was dismissed on 13.6.2016 in F.A.T 184 of 2016, as filed by BDA for non-compliance was again challenged by BDA in FAT 66 of 2016, which was also dismissed as 'not pressed'. That apart Shrachi Burdwan has repeatedly attempted to re-open settled issues and its first belated Challenge in W.P number 9778 (W) 2012 was dismissed by the Division Bench in FMA 887 of 2019, which categorically denied the locus of Shrachi Burdwan. The said judgement was expressly affirmed by the Hon'ble Supreme Court in C.O. 5856 of 2019 and constitutes binding precedent. The subsequent attempt was made by filing multiple revisional application, and the Single Bench erroneously held Shrachi Burdwan as a 'person interested' and a necessary party which was set aside by the Hon'ble Supreme Court with explicit direction to proceed with execution. Third attempt was made by filing objection under Section 47 is nothing but as a re-litigation, which is squarely barred by Res-judicata and principles of finality. The limited liability granted by this court in earlier civil appeal was confirmed strictly to 8 proceedings under Section 54 of the Act and any stretch of imagination did not extend to reach out revisional jurisdiction and such liberty cannot override or dilute the binding the ratio decidendi whereby Hon'ble Supreme Court affirmed the judgement passed in FMA887 of 2019 and set aside the contrary view of the single bench. No appeal has been preferred by Shrachi Burdwan against the present award and any such right, if assumed stands long, waived by deliberate inaction.

20. It is further his contention that the order of the executing court dated 9.1.2018, rejecting the claim of Shrachi Burdwan as a “person interested” was never challenged and has attained finality and therefore the reference court’s order under Section 18 dated 23.8.2017 stands restored by the Hon’ble Supreme Court. It is a settled proposition of law that the requiring body may be a proper party under Section 50 but is never a person interested under Section 3(b) of the Act. The argument advanced that an inter se dispute between BDA and Shrachi under MOA dated 8.3.2006, do not bind the land losers, and the amount paid by Shrachi towards lease, premium or rent ,lost their character upon being credited to BDA/state funds and cannot be claimed as Shrachi’s money for purposes of compensation. In this regard relied upon the case of ***Pratibha Nema and ors. vs State of M.P⁹*** and ***Naihati Municipality vs Chinmoyee Mukherjee and Ors.¹⁰***

21. The learned Advocate further relied upon the decision of ***Shyam Behari and Ors. Vs. State of Madhya Pradesh and Ors.¹¹***, ***State of West Bengal Vs P.N Talukdar¹²*** with regard to the objections raised assailing the validity of Section 4 and 6 notification and seek to nullify concluded acquisition proceedings and impermissible collateral attack by precedent. Therefore, the lands in present case having not being acquired at the behest of Shrachi and is an allottee under the lease agreement dated 27.8.2010 from the BDA is not a ‘person interested’, not having any right to participate in assessment of compensation proceeding under section 18 of the Act or having right to be

⁹ AIR 2003 SC 3140

¹⁰ AIR 1997 SC 378

¹¹ AIR 1965 SC 427

¹² AIR 1965 SC 646

heard. Shrachi Burdwan if cannot be a party in the reference proceeding cannot have any say in execution proceeding, and hence the objection under Section 47 CPC is not maintainable. No appeal can also be maintained for having no locus under Section 54 of the Act. Furthermore the award dated 21.5.2012 was passed jointly in favour of three awardees, Abdul Aleem, Abdul Aziz, and Abdul Rahim, but is several in nature. The objection under Section 47 was filed only against Abdul Alim, leaving the awards in favour of the other two awardees untouched and fully satisfied. The revisional court cannot enlarge the scope beyond what was originally challenged. Challenged to the award in favour of two awardees is waived and became settled. Abdul Rahim already died on 2.10.2017.

22. The learned Advocate further discussed the scope of section 47CPC which is extremely narrow and the executing court and as well as the revisional court under Section 115 CPC cannot adjudicate third-party claims, examine disputed facts, or travel beyond the decree. The present objection validates the binding term of Hon'ble Supreme Court in Rahul .S.Shah, Pradeep Mehra, and Periyammal. The objection is further barred by limitation under Section 137 of the limitation Act having been filed long after knowledge of the award and execution process only after exhausting all attempts up to the Hon'ble Supreme Court and relied upon the case of Rasomoy Mitra and Kerala State Electricity Board in support of such contention. In terms of the judgement BDA deposited the decretal amount in the executing court with no objection to withdrawal by decree holder/landowners and they have already withdrawn the same to the full and final satisfaction. The execution process has been closed

and now the third-party like Shrachi Burdwan cannot really get the award under the garb of Section 47 CPC. Accordingly prayed for dismissal of the revisional applications with costs.

Argument made by BDA

23. The learned Advocate representing BDA argued that after having full knowledge about the entire process of acquisition they entered into agreement with Bengal Shrachi for the purpose of development and in terms of the agreement BDA after acquisition of land handed over the same to Bengal Shrachi and in accordance with the specific terms and condition the Bengal Shrachi paid the compensation amount but after passing of the award enhancing the compensation by the Learned L.A court they refused to pay the same. However subsequently by virtue of the order passed by the Contempt court the entire payment is made over to the parties and hence this proceeding is nonest in the eye of law. It is further submitted that the petitioner is having no locus standi to move this revisional application as he is not the requiring body. BDA further adopts the argument advanced by the Respondent no. 2 & 3.

Analysis

24. Heard the submissions of the learned Advocates. On the above facts and circumstances as placed before this court, this court is of the view that before delving into the bottom of the case, it is necessary to look into the overall facts and to revisit the provision of law under which the land was acquired and purpose of such acquisition. By letter dated 12.12 2003, the proposal for

acquisition of land was given by Burdwan Development Authority to the collector, land acquisition department Burdwan for acquisition of land in 4 Mouzas for development of Satellite Township Project, and the request was made to the collector to acquire 257.81 acres of land and to handover its possession to the Burdwan Development Authority to enable them to develop the proposed project. It was further mentioned that the cost of acquisition will be borne by BDA . It is clear from the notice inviting expression of interest that BDA is a statutory authority of the government of West Bengal formed under the West Bengal Town and Country Planning and Development Act 1979 charged with the control of land use and intends to take up the Infrastructure Development activities through suitable Public Private Partnership project. Therefore, undisputedly it was a public partnership project had some terms and conditions where BDA to take all steps to acquire the project and handover the same free from all encumbrances and encroachment to the private partner in accordance with the project implementation schedule to be fixed after mutual discussion. The notification under section 4 /6 of the Act, I of 1894 to all concerned dated 10.5.2005, 1.12.2005 were issued on behalf of Government of West Bengal, Land and Land Reforms department, Land Acquisition .On giving a cursory glance to the affidavit filed by BDA in the writ petition 16280 (W) of 2025, it is clear that Bengal Shrachi was only interested with the job of developing the said land and the ownership of the said land to be remain with BDA. The record further discloses that Bengal Shrachi already invested around ₹11, 17, 99, 824 crores, being a renowned builder and have an experience of promoting various big projects in West Bengal. The affidavit in opposition used by Bengal Shrachi as found from the record filed in the writ

petition being WP no. 16280 (w) of 2008. It was specifically stated on oath that after acquisition of the said land, it will not be transferred in favour of Bengal Shrachi and BDA will be the actual owner of the said land. Moreover, the said project is built for public purpose as because it will be sold to public after development. Therefore, there is no dispute with regard to the fact that the property was acquired for a public purpose, namely for creating infrastructure for setting up a Satellite Township in Bardhaman City and for improvement of the same. The Acquisition was at the expense of the BDA in the form of requiring body, and BDA is raising fund with the help of private participation in implementing the aforesaid public purpose.

25. By way of affidavit in opposition BDA also made statement in the above mentioned writ petition that in terms of the land Acquisition Act, the land was acquired and such acquisition was within the purview of public purpose as envisaged in Section 3(f) of the land Acquisition Act 1894 and after that declaration under section 6 has been published in newspaper and the award was made and compensation paid in view of acquisition of the said land by state of Bengal on behalf of BDA as requiring body. Accordingly, the entire compensation was made over by BDA to the state of West Bengal and the State of West Bengal has paid the compensation to the persons concerned. It was mentioned in the affidavit in opposition by BDA that the entire compensation has been paid by BDA. In this case, there are rounds of litigation at the instance of the present petitioner, who has come to this entire scenario by entering into an agreement with the BDA on 21st day of August 2010, along with Shrachi Burdwan whereas lessee the name of Shrachi Burdwan

Developers Pvt. Ltd it is mentioned, and as confirming party name of Bengal Shrachi Housing Development Limited. According to such agreement, BDA invited expression of interest from reputed company/developers for suitable private partners for association in the township project and by the MOA, BDA had accepted the confirming party that is Bengal Shrachi who will pay the entire cost of construction, develop the project, prepared all design and drawing develop its infrastructural facilities. The MOA was executed between BDA and Bengal Shrachi on 8th March, 2006.

In clause 5 of the same it provides that company shall pay the actual cost of acquisition of the land together with all applicable incidentals, as maybe determined by the land Acquisition Collector, Burdwan in accordance with the provision of land Acquisition Act, 1984. It was further agreed that the company would also bear additional cost in connection with the acquisition like subsequent payment to the land losers in pursuance of the court orders, etc if any on actual basis. Therefore, the right of the present petitioner Shrachi Burdwan Development Private Limited, emanated from the agreement entered into with BDA on 27th day of August 2010. In the said agreement the specific details of the parties were described and it reveals that Shrachi Burdwan is a lessee and Bengal Shrachi Housing Limited is a confirming party. The project land was also described which was accepted BDO Memo no. 305/BDA on November 8,2004 and such land to be used as per development plan of BDA . It further disclose that Memorandum of Agreement dated 8th March, 2006 between BDA and confirming party and by a letter of BDA being Memo no. 195/BDA dated 1st March 2007,whereby the confirming party has been

accorded “No objection” certificate to special purpose vehicle to implement the Satellite Township Project in due compliance of the terms of and condition of MOA . The process of acquisition commenced in the year 2005 /2006 when there was no existence of Shrachi Burdwan Pvt ltd /petitioner herein. It was Bengal Shrachi who deposited ₹1,91,75,810 with BDA for paying the cost of Acquisition in 4 LA cases. Therefore, it is evident that at the time of process of Acquisition, the present petitioner was not into the forey and his right derived from an agreement entered into between BDA,Shrachi Burdwan and Bengal Shrachi as confirming party with certain terms and conditions entered into between them. In terms of the relevant provision of section 18, as discussed above of the Land Acquisition Act and specially when the instant project was only for public purpose which is governed under part II of the Act and not under part VII which is acquisition for a company and hence the stand taken by the petitioner that it was a public purpose, partnership and the petitioner to be constituted as a representative of BDA is not tenable in the eye of Law.

26. The challenge before this court as assailed by the petitioners in three revisional applications are the refusal by the executing court to implead the petitioner as a party to the execution proceeding, secondly the petitioners are aggrieved with the order dated 29th July 2025 dismissing the application filed under Section 47 Cr.P.C and against the order dated 30.7.25 refusing to stay the further proceeding of the execution case.

27. Upon giving an anxious consideration of the facts and circumstances of the case it is evident although the petitioner tried to be a party in the proceeding with the contention that they are the representative of BDA and hence party

interested and necessary party ,such contention though was accepted by the Learned Co-ordinate Bench but set aside by the Division Bench of this court and duly affirmed by the Hon'ble Supreme Court. The observations made by the Division Bench as well as the Hon'ble Apex Court questions the locus of the petitioner which was found not established. The learned senior advocate relied upon all the judgement relied before the learned single Bench regarding the locus standi of the present petitioner and those were duly dealt with by the learned Single Bench, where the definition of a 'person interested' given in section 18 was discussed. In ***Himalaya Tiles and Marble (p) Limited (Supra)*** it was held that the definition of person interested must be liberally construed, so as to include a body, local authority, or a company for whose benefit the land is acquired and who is bound under an agreement to pay the compensation. The question was raised that how can it be said that a person for whose benefit the land is acquired and who is to pay the compensation is a person interested even though it's take maybe extremely vital.

28. In the instant case, this point was agitated before the learned executing court when the petitioners filed the application under Order 1 Rule 10 (2) of Code of Civil Procedure and the learned court held that the terms of agreement entered in between Burdwan, Shrachi and BDA or Burdwan Shrachi and Bengal Shrachi are not binding upon the present petitioners/land losers or the State as none of them are parties in the said agreement/contracts. In terms of the agreement, Shrachi is required to pay additional compensation, if any to the land looser, and if that be so the court was of the view that BDA is at liberty to recover the same from Shachi and pay the same to the actual looser. The

Division Bench while deciding appeal filed against the order passed by the single bench dealt with the legal questions which are as follows.

“I) whether the first respondent herein, in its capacity as the person implementing as the public project for which the land was acquired under an agreement with the requiring body would be a “person interested” within the meaning of Section 3(b) of the Act of 1894.

II) Whether the first respondent herein, in such status, was entitled to be a party to the reference proceedings under Section 18 of the Act of 1894.

III) Whether either the reference court or the land-losers who had sought the references for enhancement of compensation was obliged to issue any notice to the first respondent herein , enjoying the status as indicated above, or implead such person in the reference cases before any enhancement of compensation could be allowed in the reference.

IV) Were the writ petitioners entitled to the order that they have obtained?

29. The Division Bench discussed the Act of 1894, which envisages the acquisition of land by the state for any public purpose or at the behest of a company and the Act provides for publication of a preliminary notification under section 4 thereof, the hearing of objections from persons interested in any land which has been notified under section 4(1) of the Act in accordance with Section 5A thereof and issuance of declaration that the land is required for public purpose or for a company issued under section 6 of the Act. For all

practical purposes, the physical possession of the acquired land may be taken over upon publication being made under Section 6 of the Act and the collector's award being declared, though matters pertaining to the final compensation and the like, may take years thereafter. It was also discussed that the Act of 1894 provides for an extraordinary situation since the land is to be acquired for a direct public purpose, or for a private body, for the larger interest of the economy, the physical access to the land and the right to use the same is given paramount importance and the rights of the land losers, qua the receipt of due compensation need not be conclusively assessed by the time the nature and character of the acquired land is irreversibly changed and such land is forever lost to the land losers. It was also discussed that the proviso to Section 6(1) of the Act of 1894 mandates that no declaration under section 6 of the act shall be made unless the compensation to be awarded for such property is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

30. The Division Bench further discussed definition of company which includes companies as defined in Section 3 of Companies Act, 1956, other than government companies and also includes private registered societies and private cooperative societies, government companies and registered societies and cooperative societies controlled by the government are included within the definition of corporation owned or controlled by the State in Section 3(cc) of the act of 1894. Therefore, from the interpretation of the provisions envisaged in the Act of 1894, regarding acquisition of the land for the public purpose or for the company clearly defined and in the instant case from the content of the

notification, there remains no ambiguity that the acquisition was made for the purpose of development of Burdwan Satellite Township that is for public purpose and lands were acquired after complying with all required formalities and also in accordance with the law the compensation as decided by the state Authority was paid. In terms of section 18 of Land Acquisition Act, if any person interested who has not accepted the award may apply before the collector for measurement of the land and determination of the quantum of compensation. Section 18 reads as follows.

“18: Reference to court.

1) any person interested, who has not accepted the award may by written application to the collector, require that the matter be referred by the collector for the determination of the court, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable or the apportionment of the compensation among the persons interested.

2) the application shall state the grounds on which objection to the is taken:

Provided that every such application shall be made-

a) if the person making it was present or represented before the collector at the time when he made his award, within six weeks from the date of the collector's award;

b) In other cases, within six weeks of the receipt of the notice from the collector under Section 12, Sub-Section (2), or within six

*months from the date of the collector's award,
which your period shall first expire.”*

31. Before the Division Bench, the learned Advocate appeared on behalf of the land losers referred the second proviso to Section (1) of the Act of 1894 to emphasise that it matters a little whether, Shrachi Burdwan would be merely discharging the obligation of the requiring body in terms of an agreement with the requiring body and according to them, in such a scenario, Shrachi Burdwan would not acquire any status, independent of the body to be entitled to have a voice in courts in the reference proceedings or any say in the matter of assessment of the compensation to be paid to the land losers. It was further contended that the moment the court recognise that the acquisition was made for public purpose, it endorsed the declaration that was made under section 6 of the Act of 1894, and as a consequence, the compensation to be awarded for the acquisition was to be paid wholly or partly out of public revenues or some fund controlled or managed by a local authority or else the declaration would never have been made.

Section 50 of the Act of 1894 reads as follows:-

“50. Acquisition of land at cost of a local authority or company.

1) Where the provisions of this act put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any company, the charges of and incidental to such acquisition shall be defrayed from or of such fund or company

2) In any proceeding held before a collector or court in such cases the local authority or company concerned may appear and adduce evidence for the purpose of determining the amount of compensation;

Provided that no such local authority or company shall be entitled to demand reference under section 18.”

32. It is apparent from the record as well as from the submissions advanced that the writ petitioners claimed and filed objection under Section 5A of the Act of 1894, which was deemed to be rejected upon declaration is being issued under section 6 of the Act that the land proposed to be acquired was required for the public purpose, and the Division Bench held that therefore, the principal ground urged by the petitioners about the purpose for which such acquisition was made or that it was made for private profit making exercise because of involvement of private promoters was dismissed upon the court, expressing satisfaction that the acquisition was for public purpose and noticing that the recurring body was a development of authority constituted by state government under the Act of 1979 for the Burdwan planning area, an area declared as such under the State Act of 1979.

33. The Division Bench of this court meticulously discussed all the judgements relied upon before the learned Single Bench as well as before the Division Bench by the learned Senior advocate, Mr. Arindam Banerjee representing the petitioner. The Learned Senior advocate referred to the concept of Public Private partnership in the Act of 2013, that has now replaced the Act of 1894 and Section 3 (zb) of the Act of 2013 which defines “Requiring body” which is

placed along with Section 95 thereof and its correspondence to section 50 of the Act of 1894, but specifically a right to the requiring body to appear and adduce evidence for the purpose of determining compensation before the collector. The submission made on behalf of the present petitioner that the present Acquisition Act of 1894 to be guided by the subsequent legislation, was not accepted by the learned Division Bench. It was clearly observed that,;

“First, the Act of 2013 makes a deliberate departure from its predecessor statute in such regard. Secondly, Shrachi Burdwan cannot be seen to be the requiring body in the milieu of the subject acquisition.”

34. The distinction was drawn between a person covered by the expression “person interested” in Section 3(b) of the Act of 1894 and the expression “*Any person interested*’ in Section 18 thereof. This argument was also discussed and held that “*the expression “any person interested” in section 18 of the Act gives such person a right to refer the collector’s award for determination of the court and any expansive meaning attributed to such expression has to be tempered by the prohibition in the proviso to section 50 of the Act of 1894.*”

35. It was clearly held by the learned Division Bench that it is doubtful Shrachi Burdwan can even be regarded as a “person interested” within the meaning of relevant expression in Section 3 (b) of the Act of 1894, and the petitioner did not take any steps to be completed in the reference proceeding or even bothered to prefer any appeal against such orders. There remains no doubt that Shrachi Burdwan was aware of the references and the order passed there in. At any rate with exercise of minimum diligence, Shrachi Burdwan should have been aware of the pendency of the references and contemporaneously

aware of the orders of enhancement. Even otherwise, in view of the status under the agreement with the requiring body, Shrachi Burdwan ought to have kept self-informed of the references, the progress made there in and the fate their off; and no argument to the contrary made by Shrachi Burdwan can be countenanced in the equitable jurisdiction exercised under Article 226 of the Constitution. The learned Division Bench also negated the stand taken by the present petitioner that it was the duty of the land losers or the reference court to implead the petitioner or issue notice of the reference proceeding to it. It was lastly held that Shrachi Burdwan could never have been recognised to be 'Any person interested' within the meaning of Section 18(1) of the Act of 1894 and had no right to challenge the order granted or the annulment of the orders of enhanced compensation passed by the reference court in the light of its conduct and dates, unable and abject failure to protect its perceived rights with the degree of diligence that was expected of it. It was further held that;

“it cannot be said by any stretch of imagination, that it was the duty of either the land, losers or the reference court to implead Shrachi Burdwan or issue notice of the reference proceeding to it. Even upon applying the dictum of Constitution Bench judgement in UP Awas , Shrachi Burdwan could not have been regarded by the reference court suo motu as the requiring body or the person for whose benefit the acquisition was made.”

36. The view of the learned Division Bench as appears *“the Shrachi Burdwan is not left without a remedy. Once he discharge its unequivocal obligation under the agreement with BDA to put the requiring body in funds to satisfy the decree,*

obtained by the appellants herein , Shrachi Burdwan may, subject to the laws of limitation, bring an action against partner BDA if it perceives BDA to have colluded with the appellants herein or to have otherwise unlawfully facilitated, the Appellants herein to obtain undeserving orders of enhancement of compensation. But before the forum to which such action is carried, Shrachi Burdwan would have to contain exactly the opposite of what it has conversed in these proceedings before the writ court and in this appeal, Shrachi Burdwan would then have to assert that since it was neither a requiring body in the acquisition of the land, nor a person for whose benefit the exercise was undertaken, it's right to proceed against BDA for damages, remain unaffected by the reverse that it suffers in this appeal and, on the contrary, is strengthened thereby. If the relevant forum holds otherwise, and the claim is repelled, BDA would only be a victim of its conduct or of its erroneous perception of having suffered any prejudice by the end, enhanced awards.”

37. The legal question that was raised was answered to this extent that ‘it is doubtful that Shrachi Bardawan in its capacity as the person implementing the public project for which the land was acquired under the agreement with the requiring body, maybe regarded as a “person interested” as per the definition in Section 3(b) of the Act of 1894’. It was also decided that Shrachi Burdwan in such status was not entitled to be a party to the reference proceeding under Section 18 of the Act of 1894. Neither the reference court nor the land losers were obliged to issue any notice of the reference proceeding to Shrachi Burdwan. The Division Bench with such observation clearly held as per the status of the petitioner Shrachi Burdwan is not entitled to be a party in the

reference proceeding under Section 18 of the Act of 1894 and the writ petitioners were not entitled to any relief in the light of the Shrachi Burdwan's dismal conduct and accordingly set aside the appeal being FMA 887 of 2019. Assailing such order Shrachi Burdwan went up to Hon'ble Supreme Court by filing Civil Appeal No. 5856 of 2021. Arifa Khatoon and ors. also moved SLP before Hon'ble Supreme Court against the judgement and order dated 26.2.2020 passed in C.O No. 1232 of 2018 whereby also the learned single Bench held the award passed enhancing the compensation awarded in respect of a reference proceeding is null and void and the award passed by the reference court enhancing the compensation was set aside. Hon'ble Supreme Court by a common judgement affirmed the order passed by the Learned Division Bench and set aside the order passed by the learned single Bench.

38. The point was raised that in view of the definition of Section 3 (b) of the Act Shrachi Burdwan can it said to be a person interested as the ultimate liability to pay the enhanced compensation would be upon the appellant and he was not included as a party in the reference court under Section 18 of the Act and was not heard by the reference court. It was observed by the Hon'ble Supreme Court that-

“Therefore, in the facts and circumstances of the case and particularly when the locus of the appellant Shrachi Burdwan to challenge the judgment and award passed by the Reference Court is seriously disputed and whether the appellant, Shrachi Burdwan can be said to be a “person interested” within the definition of Section 3(b) of the Land Acquisition Act and

thereby the appellant can challenge the judgment and award passed by the Reference Court enhancing the compensation are all disputed question of facts are all contentious issues, we are of the opinion that learned single judge of the High Court ought not to have entertained the writ petition under Article 226 of the Constitution of India and not to have set aside the judgement and award passed by the reference court, enhancing the amount of compensation under the provisions of the land Acquisition Act.”

The order passed by the learned single judge in civil appeal number 5857–5880 of 2021 was also set aside being not sustainable at law.

39. The learned Senior Advocate Mr. Arindam Banerjee, draws the attention of this court to the paragraph 15 of the judgement delivered by the Hon’ble Supreme Court, where by civil appeal was dismissed but it was observed that:-

“it will be open for the appellant/Shrachi Burdwan Developers Private Limited to pursue whatever other remedies may be available to them in accordance with law ,which may be including filing of appeal under section 54 of the Land Acquisition Act ,however subject to the leave to appeal granted by the High Court for which the appellant has to file a proper application n for leave to appeal and satisfy the High court that the appellant company can be said to be the person interested under Section 3 (b) of the Land Acquisition Act and that the

appellant company has a locus to prefer appeal under Section 54 of the Land Acquisition Act”.

It was further observed that:-

“It will be open for the land owners to challenge the locus of the appellant -Shrachi Burdwan as a person inducted within the definition of section 3(b) of the land Acquisition Act and to contend that the applicant has no locus to challenge the judgement and award passed by the reference court. All the aforesaid questions are kept open to be considered by the High Court as and when such application is preferred along with the appeals.”

40. Therefore from the observation it is evident that, the Hon’ble Supreme Court kept open the issue of the locus of the present petitioner to be decided by the High Court which may be including filing of appeal under Section 54 of Land Acquisition Act and to take all other remedies may be available to them in accordance with law . It is specific stand of the learned Senior Advocate that in view of such leverage given to the petitioner the petitioner filed the application for addition of party in the Execution case since by the time the execution proceeding was initiated which was turned down by the Learned executing Court giving rise to filing of the revisional application as it was not the mandate of the Hon’ble Apex court that the petitioner can only filed the appeal. In the observation of the Hon’ble Supreme Court a specific condition was even expressed that such appeal under Section 54 Of L.A Act can be filed subject to leave granted by the High Court satisfying about the locus of the petitioner company that they are person interested Unser Section 3(b) of the Land

Acquisition Act. As it appears that the petitioner company never prayed for any leave to file appeal before any Court nor filed any appeal as directed by the Hon'ble court but interpreting the order "which may include" which according to Mr. Arindam Banerjee the learned Senior Advocate has opened a wider scope to approach the executing court by filing a petition under Section 47 of CPC coupled with two applications under Section 151 CPC. The learned executing court by the order dated 29th July 2025 dismissed all the applications. The learned Executing court observed that Section 47 CPC deals with the question arising between the parties to the suit or their representatives apropos the execution, discharge or satisfaction of a decree and it is no longer *integra* that the executing court cannot go beyond the decree between the parties to the suit or their representatives. It was clearly observed that the petitioner is neither a party nor the representative of any party of the original land Acquisition case. More so the executing court cannot act as an appellate court or revisional court.

41. It is unambiguously clear and held by the Division Bench affirmed by the Hon'ble Apex court that despite having knowledge about the reference proceeding the petitioner never tried to be impleaded as party in the reference proceeding and waited till the award was passed and subsequently enhanced and the decree was put into execution. The petitioner has miserably failed to satisfy the Division Bench of Calcutta High Court as well as the Apex court about their locus to be impleaded in the reference proceeding and therefore the appropriate remedy would have been before the appellate authority against the award passed in the reference proceeding. He cannot be otherwise said to

be interested person in the subsequent proceeding, when the reference was filed for enhancement of the compensation. The leverage given by the Hon'ble Supreme Court to the petitioner to take appropriate measures can never be interpreted to raise the same issue and to challenge the decree/award passed by the reference court considering the same as null and void since passed without giving him an opportunity of hearing. The learned Division Bench of this Court meticulously discussed the status of the petitioner in view of the law laid down and the said observation has been duly affirmed by the Hon'ble Supreme Court however allowed the petitioner to prove his locus in the original proceeding. BDA filed the appeal challenging the decree being F.A184 of 2016, got dismissed on 13.6.2016 for non- compliance and again BDA challenged it in FAT 66 of 2016 which was dismissed as "not pressed".

42. The present petitioner has filed an application to recall such order which is yet to be decided and therefore at present, there is no appeal pending challenging the award passed by the reference court in enhancing the compensations despite the opportunity given by the Hon'ble Supreme Court . The petitioner left no stone unturned and filed the application under section 47 CPC in the execution case filed in connection with such award despite being aware about the scope of Section 47 CPC being extremely narrow. A third party claim to examine disputed facts cannot be adjudicated and the executing court also cannot travel beyond the decree. Section 47 CPC reads as under;

*"47. Questions to be determined by the court
executing degree;*

1) all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court, executing the degree and not by a separate suit.

3) where a question rises as to whether any person is or is not the representative of a party, search question shall, for the purposes of this section be determined by the court.

Explanation I- for the purpose of this section, plaintive whose suit has been dismissed and a defendant against whom a suit has been dismissed, our parties to the suit.

Explanation II;-

a) for the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

b) all questions relating to the delivery of possession of such property to such purchase purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.”

43. In the decision as relied upon by the learned advocate, representing the respondents 2 & 3 in **Anand Chandra Panda Dead Through Lrs. versus Collector, Keonjhar and another**¹³ held that-

“on a reading of Section 47 of the CPC, it becomes evident that all questions arising between the parties to the suit in which the decree was passed or their representatives relating to the execution discharge or satisfaction of the decree must be determined by the court, executing the decree and not by a separate suit. This manifest the questions must be determined during the process of the execution of the decree. It is during the pendency of the execution and proceeding, and not subsequently when the execution proceeding is closed and the decree has been executed to the satisfaction of the executing court.”

In the instant case, in view of the subsequent orders passed by the learned single bench in the contempt proceeding, filed by the land losers after the application under section 47 CPC was dismissed, and the decree was executed after being satisfied, directed the amount as deposited with BDA to be paid to the land losers and accordingly the same has been paid. Therefore, practically their remains nothing to be adjudicated further in this proceeding, unless the present petitioner could prove their locus before the appropriate forum to challenge the proceeding.

44. In the decision of **R.P.A. Valliammal vs R. Palanichami**¹⁴ held that:-

¹³ 2026 SCC OnLine SC 121

¹⁴ (1997) 10 SCC 209

“Section 47 postulates that all questions arising between the parties to the suit in which the decree was passed or their representative and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court, executing the decree and not by a separate suit”.

The petitioner has not been able to prove as of now that he is the representative of the judgement debtor or any of the parties to the original proceeding. The judgement delivered by the Supreme Court in ***Dhurandhar Prasad Singh (supra)*** the power of the court under Section 47 of the Civil Procedure Code, 1908 was discussed and held that objections under Section 47 to executability of decree held can be allowed if it is found that decree is void ab initio and a nullity . This judgement has been relied upon by both the learned advocates and much emphasis has been given by the learned Senior advocate, Mr. Arindam Banerjee that since no opportunity was given to the petitioner in the original reference proceeding hence any decree passed without offering opportunity to the necessary party to be treated as a nullity and hence petitioner is entitled to raise the objection, even at the stage of execution of such decree, where he was not a party.

45. In order to buttress such argument, the learned Advocate Mr Siddharth Banerjee relied upon the paragraph 24 of the said judgement where it was held that the exercise of power under Section 47 of the code is microscopic and lies in a very narrow inspection hole. More so when the present petitioner was very much aware about the proceeding initiated for granting compensation and subsequently, the reference filed for enhancement of the compensation when

they did not participate in the proceeding or made any attempt to be impleaded and belatedly filed their first objection by filing a writ petition and became successful, but such order of the learned single judge was set aside by the Hon'ble Division Bench and affirmed by the Hon'ble Supreme Court can in no manner be assailed such decree as a void ab initio which would enable the petitioner to reopen the case by allowing the application under section 47 of code of civil procedure. Careful perusal of the judgement further reveals that in that case situations were discussed where the decree can be said to be void or only without jurisdiction, for example maybe transaction against a minor without being represented by his next friend. Such a transaction is a good transaction against the whole world. So far as the minor is concerned, if he decides to avoid the same and succeeds in avoiding it by taking records to appropriate proceeding, the transaction becomes void from the very beginning. In the same decision also, a situation was taken note of as discussed in ***Marshalsea case***¹⁵ that:-

“...when a court has jurisdiction of the cause, and proceeds in verso ordine or erroneously, there the party who sues, or the officer or minister of the court who execute the precept for process of the court, no action lies against them. But when the court has not jurisdiction of the cause, there are the whole proceeding is coram non judice, and actions will lie against them without any regard of the precept or process.....”

¹⁵ (1612) 10 Co Rep 68b: 77 ER 1027

46. In the instant case no such situation arose and the learned reference court passed the award enhancing the compensation in accordance with law and the award was put into execution. The petitioner approached the executing court to be impleaded as a party which was refused and the order of the learned single judge permitting the petitioner to be included as a party was set aside by the Division Bench and duly affirmed by the Hon'ble Supreme Court. Despite liberty is granted to the petitioner, no appeal has been preferred as of now against such award and the appeal preferred by BDA was dismissed being noted, and an application is now pending for recalling the order of dismissal of the initial appeal filed by BDA and filed the application under Section 47 of Code of Civil Procedure.

47. The present petition clearly mentioned that the District Magistrate issued 12 separate notifications under section 4 of the land Acquisition Act, notifying that the land needed for the purpose of a project in the month of April 2005, in May 2005, and in the month of December 2005, and January 2006, the notice under Section 6 was issued by the land and land reforms department Declaring that the land needed for setting up of the project. The Bengal Shrachi entered into the agreement of assignment in the year 2006 with the present petitioner Shrachi Burdwan where under Bengal Shrachi investor, Xander Investment holding VI limited a Mauritius based company incorporated for the purpose of making investments in a real estate sector in India as permitted under regulatory regime, agreed to develop the same project through the petitioner Shrachi Burdwan as a special purpose vehicle, the SPV and by the side agreement Bengal Shrachi assigned and transferred all its rights, a

title and interest in the development of the state project to the petitioner Shracchi Burdwan but at no point of time any of the land loser was a party to the said agreement. No intimation was ever given regarding such deed of assignment to the land losers or the purpose for which the acquisition of land as declared was changed. Even if any such assignment is permitted by BDA and if not followed subsequently the entire dispute lies between BDA and the developers and the subsequent assignees which has been categorically observed by the Hon'ble Division Bench affirmed by the Hon'ble Supreme Court.

48. Before this court the challenge is made against the said order of the Executing court dismissing refusing to entertain the application filed under Section 47 of CPC and in view of the facts and circumstances the observations made by the Hon'ble Apex court affirming the observation of the Hon'ble Division Bench ,there is no room left to hold that the executing court acted with gross failure in exercise of jurisdiction vested in it under the law as the decree was void being passed by not impleading the petitioner as in the execution proceeding since under public purpose, partnership the petitioner is to be construed as a representative of BDA . This stand was negated at every stage since this proceeding emanated in terms of land Acquisition Act Of 1894. In the decision of **Anisminic Ltd. (supra)** decided the issue of lack of jurisdiction which may arise in various ways which include absence of formalities or things which are conditions precedent before the tribunal may at the end make an order that it has no jurisdiction to make. The aforesaid

proposition finds reflection in the observation of one of their Lordship, which reads as under-

“Lack of jurisdiction may arise in various ways. There may be an absence of those formalities or things which are conditions precedent to the tribunal may at the end, make an order that it has no jurisdiction to make. Or, in the intervening stage, while engaged in a proper enquiry, the tribunal may depart from the rules of natural justice.; or it may ask itself the wrong questions; or it may take into account matters which it was not directed to take into account. Thereby it would step outside its jurisdiction. It would turn its enquiry into something not directed by the Parliament and failed to make the enquiry which the parliament did direct. Any of these things would cause its purported decision to be a nullity.”

49. In the present case as on date the petitioner has not taken any steps against BDA for violation of any terms of the agreement which was also observed by the Hon'ble Division bench .In view of the law lay down in this regard, lack of jurisdiction and the explanations found in various judicial announcement, this court do not find any substance regarding maintainability of the revisional applications by the petitioners. Challenging the orders passed by the executing court refusing to entertain the application under Section 47 of the Code of Civil Procedure, refusing to implead the petitioner as a party to the execution proceeding and also disposing of the execution case in terms of the award passed by the reference Court finally after being satisfied with the Decree as the entire amount of compensation was deposited and withdrawn by the land losers. It is clearly evident that a contempt application was filed by

the Land losers in connection with Money Execution case being 12 of 2012 where the specific direction was given to the District Magistrate, Purba Burdwan to comply the order dated. 29.8.2018 and 12.9.2018 and accordingly the District Magistrate undertook the compliance. And as a consequence a certificate proceeding was also initiated. The Hon'ble Supreme Court in the case of **Rahul S. Shah versus Jinendrakumar Gandhi**¹⁶ has held that-

“.....the benefit of section 47 CPC cannot be availed to conduct a retrial causing failure of realisation of the fruits of the decree. Section 47 is intended to prevent multiplicity of suits .It simply lays down the procedure and the form whereby the court reaches a decision. For the applicability of the section, two essential requisites have to be kept in mind. Firstly, the question must be the one arising between the parties and secondly, the dispute relate to the execution, discharge or satisfaction of the decree. Thus, the objective of section 47 is to prevent unwanted litigation and dispose of all objections as expeditiously as possible.”

50. This court is of the view that the petitioner in order to delay and drag the proceeding without settling their initial onus to prove their locus to interfere into the reference proceeding under Section 18 of land Acquisition Act, 1894 continue with their filing of application applications before the executing court as well as before this revisional court, knowing fully well that these are not the appropriate forum to decide the locus. That apart, the proceeding has reached to fate accompli as the degree has not only been discharge, but the payment is

¹⁶ (2021) 6 SCC 418

already made to the land losers and the prayer made by the petitioners to pass any direction to behold such amount by the land losers until the status of the present petitioners are established, does not find any leg to stand on. It is decided as of now that the Appellant is not a person interested since the land was not acquired for the purpose of appellant, and he has no right to question the award. The Lessee company of the award land is neither a beneficiary not an interested person under Section 3(b) all Section 9 of the act and is not entitled to participate in the award proceeding. It is decided that Lessee Company being post acquisition allottee of land is neither necessary, not proper, but not interested person and nor has any locus to be heard in the matter of determination of compensation. There is a distinction between the acquisition under II public purpose at public expense and under part VII acquisition for company of the L.A act 1894, and in this case, it is clearly under part II for public purpose at public expense.

51. In the case of *M/S ultra Tech cement Limited versus Mast Ram and others*¹⁷ the dispute relates to ownership of subject land and health cannot be an impediment to legitimate rights of original land owners to receive compensation. Payment of full and final compensation to land owner is a precursor to taking position of land sought to be acquired from such persons. In the said case in notice under Section 4 of A.A act 1894 was issued by state of Himachal Pradesh, declaring its intention toward the subject land measuring 56 to 14 Vega for the purpose of acquiring the land was to create a safety zone surrounding the mining area. During the acquisition proceedings of the land owners did not allow the authorities to undertake the evaluation of

¹⁷ 2024 INSC 709

their houses, trees structures for the purpose of determination of compensation, and the proceeding was challenged before High Court and an ad interim order was granted the acquisition proceeding by the High Court. The petition was ultimately dismissed on the ground that acquisition of the lands was for a public purpose and then the award was passed by the LA collector in terms of Section 24(1)(a) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and determine the compensation. Being dissatisfied with the award petition was filed with a prayer to pass a supplementary award after 2020, finding the compensation for the damage caused to the structures and standing crops and accordingly direction was passed to the supplementary award which was also passed during pendency of this acquisition proceeding JAL entered into an agreement with Apple, M/s. Ultra Tech cement for transfer of the cement project in question, the dispute arose as to who should pay the compensation amount determined under the supplementary award to the land losers and the High Court relying on the terms of the scheme, passed the order, directing the Appellant to pay the compensation amount at the first instance and left it open for them to recover the same from JAL letter, if permissible in law. The matter went up to Hon'ble Supreme Court where role of the state under Article 300 A of the Constitution was discussed and it was found that the amount determined as compensation under the supplementary award was not paid to the land owners for a period of more than two years and no effort was made by the state to get the same paid at an hour. It was held that time is of the essence in determination and payment of compensation, as is evident from the judgement in ***Kukreja construction Company and others versus State of***

Maharashtra and others.¹⁸, where also it was decided that “once the compensation has been determined, the same is payable immediately without any requirement of a representation or request by the landowners and the duty is cast on the state to pay such compensation to the land losers otherwise, there would be a breach of Article 300A of the Constitution.” Further, it is found that the state of Himachal Pradesh did not ensure payment of compensation to the respondent number 1 to 6 before taking possession of their land when Section 38(1) indicates that the payment of full and final compensation to the landowners is a pre-to taking possession of the land sought to be acquired from such persons.

Conclusion

- 52.** Therefore in summation of supra and after considering entire facts and circumstances this court do not find any merit in the case.
- 53.** This Court further is of the view that the petitioner has persistently raised the same contention before different forums ,notwithstanding that the issue stands conclusively settled by the Supreme Court .In absence of any appropriate challenge to the said decision ,such proceedings are hit by res judicata and constitute an unwarranted consumption of precious judicial time.
- 54.** Accordingly the Revisional applications being C.O. 2890 of 2025, 2892 of 2025 and 3194 of 2025 are hereby dismissed with cost of Rs.1,00,000/-/- to be paid to the Calcutta High Court Legal Aid Services Committee.

¹⁸ 2024 SCC OnLine SC 2547

55. All other connected applications are hereby disposed of.

56. Urgent certified copy if applied by any of the parties to be supplied subject to observance of all formalities.

(CHAITALI CHATTERJEE DAS, J.)

