

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

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 20562 of 2025

Smt. Ranu Dutta & Ors.

Vs.

The State of West Bengal & Ors.

For the Petitioners : Mr. Partha Chakraborty
Mr. Rishabh Dutta Gupta

For the State : Mr. Tapan Kr. Mukherjee, Sr. Adv.
Ms. Tuli Sinha Advocates

For the KMDA : Mr. Satyajit Talukder
Mr. Arindam Chatterjee
.....advocates

Amicus Curiae : Mr. Debayan Bera, Sr. Adv.

Reserved on : 25.03.2026

Judgment on : 28.04.2026

Hiranmay Bhattacharyya, J.:-

1. Petitioners have prayed for issuance of a writ in the nature of mandamus to command the respondents to withdraw, cancel, quash and recall the notification published in connection with LA Case No. LA-II/1/2 dated

1993-94 and for a direction upon the respondents and their men and agents to release the property of the petitioner from the scope and ambit of the said acquisition proceeding.

2. Petitioners claimed that their predecessor-in-interest namely Pramatha Ranjan Dutta since deceased, purchased a piece and parcel of land measuring 3 cottahs, 2 chittaks and 5 square feet along with benefit of easmentary right comprising of CS Dag no. 2454/2759, JL No. 13 within Mouza Kasba under Police Station-Kasba in the District of 24 Parganas (South) by virtue of a deed of conveyance dated April 30, 1968. Petitioners further state that their predecessor-in-interest mutated his name in the records of the Kolkata Municipal Corporation and was paying municipal rates and taxes on a regular basis.
3. The petitioners claimed that the property purchased by their predecessor-in-interest was fully covered by structure and upon the death of their predecessor-in-interest, they became the joint owners of the said property by virtue of inheritance. Petitioners' names have been mutated in the records of the Kolkata Municipal Corporation.
4. Petitioners further state that for the purpose of implementation of the township project by the Kolkata Metropolitan Development Authority, a huge area within Mouza- Kasba was proposed to be acquired for the purpose of the aforesaid township project and the land situated adjacent to the land of their predecessor-in-interest were also placed under requisition for the purpose of acquisition for implementation of the aforesaid project. Petitioners through their learned advocate's letter dated March 17, 2022 requested the respondent authorities to conduct a joint demarcation program so as to get a clear picture with regard to acquisition of land concerning CS Dag No. 2454/2759 so as to enable the petitioners to enjoy their unfettered right of ownership over the entire property.
5. Alleging inaction on the part of the respondent authorities, petitioners filed a writ petition being WPA 8357 of 2022. Pursuant to an order passed by the

co-ordinate bench on 03.01.2023, the State respondents submitted a report in the form of an affidavit disclosing certain documents in support of their claim that the entire plot of land was acquired in two phases. Thereafter the petitioners sought to withdraw the writ petition and the writ petition was dismissed for non-prosecution by an order dated 19th July, 2023. Pursuant to the liberty granted by the co-ordinate bench, the instant writ petition has been filed.

6. The petitioners allege that the order under Section 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948 (for short “the 1948 Act”) was not served upon their predecessor-in-interest. The petitioners claim that since the order under Section 3(1) of the 1948 Act has not been served upon their predecessor-in-interest, all subsequent proceedings are non-est in the eyes of law.
7. A status report has been filed by the Special Land Acquisition Officer 24 Parganas (South) dated October 13, 2025. It has been specifically stated in the said status report that RS Plot no. 2454/2759 having total area measuring about 0.88 acre of Mouza Kasba, JL No. 13, appertaining to RS Khatian No. 191 was totally acquired by virtue of two land acquisition cases. 0.82 acres of land was acquired vide LA II/105 of 1976-77 for East Calcutta Area Development (for short “ECAD”) Project of the Calcutta Metropolitan Development Authority (for short “CMDA”) now known as Kolkata Metropolitan Development Authority (for short “KMDA”) and 0.06 acres of land in the said plot was acquired vide LA II/2 of 1993-94 for construction of internal feeder road of ECAD project of KMDA in Mouza Kasba Sheet No. 7. Report further states that LA II/2 of 1993-94 was initiated for the purpose of taking over possession of the structural portion measuring 0.06 acres of the said plot which was found affected by the road alignment and possession was handed over to CMDA i.e., Requiring Body on 31.03.1994. Notice under Section 4(1a) of the 1948 Act with respect to 0.06 acres of the plot in question was published in Calcutta Gazette on 13.10.1995. Thereafter, the acquisition proceeding was carried forward by issuing a

notice under Section 9(3A) of the Land Acquisition (West Bengal Amendment) Act 1997 in favour of Nagendranath Das who was the recorded tenant of RS Khatian No. 191 and an award was declared in favour of the said Nagendranath Das on 17.01.2002. Report further reveals that since the said award amount could not be verified, the same was deposited before the Court of the learned Special Judge at Alipore. It was specifically stated in the said status report that in the land records, the plot in question was recorded in the name of Nagendranath Das during the proceeding of the said land acquisition case. It was further stated in the said report that 0.82 acres of land of the plot in question was requisitioned under Section 3(1) of the 1948 Act vide LA-II/105 of 1976-77 and possession of the said area excepting the covered structure was taken over and handed over to the CMDA on 15.05.1978. Notice under Section 4(1a) of the 1948 Act was published in the Calcutta Gazette Extra Ordinary dated November 21, 1983 and award was declared in respect of 0.82 acres of land on 21.08.1989 and Pramatha Ranjan Dutta i.e., predecessor-in-interest of the petitioners was one of the declared awardees against the said plot vide award Serial No. 30. Report reflects that the awarded amount was deposited before the learned Special LA Judge at Alipore by a cheque dated 29.11.2006.

8. Mr. Chakraborty, learned advocate appearing for the petitioner contended that the predecessor-in-interest of the petitioners was in possession of the plot in question since the date of purchase i.e., April 30, 1968 and after the death of their predecessor-in-interest, they are in possession of the plot in question. He further contended that the order of requisition passed under the 1948 Act was not served upon their predecessor-in-interest. He, thus, contended that the order of requisition was non-est in the eyes of law for non-compliance with the mandatory requirement of service as laid down under Section 3(2) of the 1948 Act read with Rule 3 of the 1948 Rules. In support of such contention, he placed reliance upon the decisions in the case of ***Tarak Nath Sen and ors. vs. First Land Acquisition Collector***¹;

¹ (1983) 1 CLJ 371

Syed Fateyab Ali Meerza vs. Union of India and ors² and M/s. Bhinasar Finance (P) Ltd. vs. State of West Bengal and Ors³.

9. Mr. Chakraborty further contended that since the order of requisition is non-est in the eyes of law, all subsequent steps taken for acquisition of the land in question should be declared to be void in the eyes of law and in support of such contention he placed reliance upon a decision of the Hon'ble Division Bench in the case of ***Sailendra Nath Pal and Ors. vs. State of West Bengal and Ors.⁴***
10. Mr. Chakraborty contended that in view of the 44th Constitutional Amendment, the right to property is a constitutional as well as a human right and in support of such contention he placed reliance upon the decision of the Hon'ble Supreme Court in the case of ***Kolkata Municipal Corporation and another vs. Bimal Kumar Shah and Ors.⁵*** Mr. Chakraborty placed reliance upon the decision of the Hon'ble Supreme Court in the case of ***Ultra-Tech Cement Ltd. v. Mast Ram,⁶*** in support of his contention that a fair and reasonable compensation is the *sine qua non* for any acquisition process.
11. Mr. Chakraborty concluded by submitting that since there was a breach of the mandatory provision of the requirement of the service of the order passed under Section 3(1) of the 1948 Act, the entire acquisition proceeding is liable to be set aside and quashed.
12. Mr. Talukdar learned advocate appearing for the KMDA seriously disputed the contention of Mr. Chakraborty. He contended that after purchase of the plot in question in the year 1968 neither Pramatha Nath Dutta nor his successor-in-interest i.e., the petitioners herein recorded their names in the

² (1981) 1 CLJ 214

³ (1992) 1 CLJ 222

⁴ (2010) 2 CHN (Cal) 315

⁵ (2024) 10 SCC 533

⁶ (2025) 1 SCC 798

record of rights. He further contended that the predecessor-in-interest of the petitioner was well aware of the acquisition proceeding but did not take any steps to challenge the same at the relevant point of time. Mr. Talukdar contended that the instant writ petition is liable to be dismissed only on the ground of inordinate delay and laches on the part of the petitioners in approaching this Court. In support of such contention he placed reliance upon the decisions of the Hon'ble Supreme Court in the case of **Star Wire (India) Ltd. vs. State of Haryana and Ors.**⁷ ; **U.P. Jal Nigam vs. Jaswant Singh**⁸; **Parag Construction vs. State of Maharashtra**⁹; **Sawaran Lata v. State of Haryana**¹⁰; **Leelawanti v. State of Haryana**,¹¹ and **Mahavir v. Union of India**¹².

13. Mr. Talukdar contended that service of an order of requisition issued under Section 3(1) of the 1948 Act is not a mandatory requirement, rather the provisions laid down under Section 3(2) of the 1948 Act is directory in nature. He contended that whether a provision is mandatory or directory would depend upon the intent of the legislature and not upon the language for which the intent is clothed. In support of such contention he placed reliance upon the decisions of the Hon'ble Supreme Court in the case of **May George v. Special Tahsildar**¹³; **Sharif-ud-Din v. Abdul Gani Lone**¹⁴ and **Balwant Singh v. Anand Kumar Sharma**¹⁵. For the same proposition he

⁷ (1996) 11 SCC 698

⁸ (2006) 11 SCC 464

⁹ (2008) 16 SCC 198

¹⁰ (2010) 4 SCC 532

¹¹ (2012) 1 SCC 66

¹² (2018) 3 SCC 588

¹³ (2010) 13 SCC 98

¹⁴ (1980) 1 SCC 403

¹⁵ (2003) 3 SCC 433

also referred to a decision of the Hon'ble Mysore High Court in the case of **Hunuikeri v. Asst. Commissioner, Dharwar Division**¹⁶.

14. Mr. Talukdar contended that the decision of the Hon'ble Division Bench in the case of **Sailendra Nath Pal (supra)**¹⁷ should be held to be *per incuriam* as the same was delivered without taking into consideration the proposition of law laid down by the Hon'ble Supreme Court in **Sharif-ud-Din (supra)**¹⁸; **Balwant Singh (supra)**¹⁹ and **May George (supra)**²⁰. He contended that a decision can be said to be given *per incuriam* when a High Court has acted in ignorance of a decision of the Hon'ble Supreme Court. In support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of **Punjab Land Development and Reclamation Corpn. Ltd. v. Labour Court**²¹.
15. Mr. Talukdar contended that the principles of natural justice cannot be imported as a condition precedent to the exercise of power under Section 3 of the 1948 Act and in support of such contention he placed reliance upon a decision of a co-ordinate bench in the case of **Saktipada Mandal v. Collector, District Hooghly and others**²².
16. Mr. Talukdar contended that the order of requisition is required to be served only upon the parties whose names have been recorded as owners/occupiers in the revenue records and in support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of **S. Palani Velayutham v. District Collector**²³. He contended that since

¹⁶ AIR 1962 MYS 169.

¹⁷(2010) 2 CHN (Cal) 315

¹⁸ (1980) 1 SCC 403

¹⁹ (2003) 3 SCC 433

²⁰ (2010) 13 SCC 98

²¹ (1990) 3 SCC 682

²² AIR 1976 Cal 282

²³ (2009) 10 SCC 664

the name of the predecessor-in-interest of the petitioners or the petitioners were not recorded in the record of rights at the time of initiation of the requisition and acquisition proceedings, the authorities were not obliged to serve the order under Section 3(1) of the 1948 Act upon the predecessor-in-interest of the petitioner.

17. Mr. Talukdar contended that a statute must be read as a whole to extract its meaning and intendment correctly and in support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of **Vijayawada Municipal Council v. A.P. SEB**²⁴. He further contended that for the purpose of construction of a section in a statute, it is to be read in its entirety in order to give a purposive and meaningful construction. In support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of **State of A.P. v. Mohd. Hussain**²⁵. He contended that after taking possession of the land and upon passing of the award, the Government became the absolute owner of the property in question free from all incumbrances. He further contended that the petitioners cannot claim any title in respect of the property which stood vested to the Government free from all incumbrances, merely by placing reliance upon certain documents in support of their possession in the property in question. In support of such contention he placed reliance upon the decision of the Hon'ble Supreme Court in the case of **State of Punjab v. Sadhu Ram**²⁶. Mr. Talukdar concluded by submitting that the writ petition is liable to be dismissed *in limine*.
18. Mr. Mukherjee learned Additional Government Pleader submitted that the possession of the land has been taken at least 50 years back and the instant writ petition is liable only on the ground of unreasonable delay in approaching the Court. In support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of **State of M.P.**

²⁴ (1976) 4 SCC 548

²⁵ (2014) 1 SCC 258

²⁶ (1997) 9 SCC 544

v. Bhailal Bhai²⁷; **State of J&K v. R.K. Zalpuri**²⁸. Mr. Mukherjee contended that the requirement of service of the order under Section 3(1) of the 1948 Act is not mandatory. As to whether a provision can be said to be mandatory or directory, Mr. Mukherjee placed reliance upon a decision of the Hon'ble Supreme Court in the case of **May George (supra)**²⁹. He contended that the decision of the Hon'ble Division Bench in the case of **Sailendra Nath Pal (supra)**³⁰ should be held to be *per incuriam* as the same was delivered without taking into consideration the well settled proposition of law laid down by the Hon'ble Supreme Court. Mr. Mukherjee contended that, 1948 Act has two parts- one is requisition and the other acquisition. He contended that when the notification under Section 4(1a) of the 1948 Act has been published, it should be presumed that the order under Section 3(1) has been duly served.

19. Considering the issues involved in this writ petition, this Court requested Mr. Debayan Bera, learned advocate to assist this Court as *amicus curiae*. Mr. Bera learned advocate contended that sub-section (1) of Section 3 of the 1948 Act consists of two parts namely-

- (i) Order in writing for requisition and;
- (ii) To make further order in connection with the requisitioning. Sub-section 2 of Section 3 provides that an order under sub-section (1) shall be served in the prescribed manner on the owner of the land and upon the tenant.

20. By referring to Rule 3 of the West Bengal Land (Requisition and Acquisition) Rules 1948 (for short the "1948 Rules") he contended that the said Rule provides for four modes of service. He submitted that both sub-section (2) of Section 3 and Rule 3 uses the expression "shall". He contended that

²⁷ AIR 1964 SC 1006

²⁸ (2015) 15 SCC 602

²⁹ (2010) 13 SCC 98

³⁰ (2010) 2 CHN (Cal) 315

according to the scheme of the Act and the rules it can be inferred that the legislative intent was that the service of the order under Section 3(1) is a mandatory requirement. He contended that for the purpose of execution of the order of requisition, possession is to be taken from the owners or occupiers as the case may be and such possession can be taken only by serving the copy of the order of requisition under Section 3(2) of the 1948 Act in the manner as prescribed under Rule 3 of the 1948 Rules. He contended that if the possession is taken without service of the order of requisition, then it will amount to trespass into the land of the owner which would result in the possession of the Government to be an illegal one. He contended that effect of non-compliance of Section 3(2) of the 1948 Act would be prejudicial to the interest of the owners or occupiers. He, therefore, submitted that the service of the order of requisition under Section 3(2) should be held to be mandatory.

21. Mr. Bera contended that if the possession of a property is taken without serving the order of requisition, it would amount to depriving a citizen of his property without authority of law. In support of such contention Mr. Bera placed reliance upon a decision of the Hon'ble Supreme Court in the case of ***Tukaram Kana Joshi v. MIDC***³¹ and ***Vidya Devi vs. Himachal Pradesh and Ors***³². Mr. Bera placed reliance upon the decisions of the Hon'ble Supreme Court in the case of ***Govindlal Chhaganlal Patel v. Agricultural Produce Market Committee***³³; ***State of Mysore vs. V.K Kangan and Ors.***³⁴ and in the case of ***Debasish Paul and another vs. Amal Boral***³⁵ to highlight the tests that are to be applied for construing a provision as mandatory. Mr. Bera contended that the requirement of the service of the order of requisition under Section 3(2) is a statutory duty prescribed under

³¹ (2013) 1 SCC 353

³² (2020) 2 SCC 569

³³ AIR 1976 SC 263

³⁴ (1976) 2 SCC 895

³⁵ (2024) 2 SCC 169

the Act. He contended that if the possession is taken without notice that will amount to deprivation of the property of the citizens and forceful entry into the land by the Government. He contended that under the 1948 Act a proceeding is initiated on the basis of an order under Section 3(1) which is to be executed by serving the said order and taking over possession of the property in question. He concluded by submitting that the service of the order of requisition under Section 3(2) should be held to be mandatory.

22. Heard the learned advocates and perused the materials placed.

The first question that falls for consideration is whether the provisions of Section 3(2) of the 1948 Act are mandatory in nature or not.

23. Before analyzing the provisions of the 1948 Act and the rules framed thereunder, it would be profitable to take note of the settled propositions of law laying down the tests for declaring a provision of a statute to be mandatory or directory.

24. In ***Dattatraya Moreshwar Pangarkar v. State of Bombay***³⁶, the Hon'ble Supreme Court reiterated the well settled proposition that the provisions of a statute creating public duties are directory but those conferring private rights are mandatory.

25. The Hon'ble Supreme Court held thus-

“25.It is well settled that generally speaking the provisions of a statute creating public duties are directory and those conferring private rights are imperative. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, it has been the practice of the courts to hold such provisions to be directory only, the neglect of them not affecting the validity of the acts done.”

³⁶ (1952) 1 SCC 372

26. In ***State of Mysore v. V.K. Kangan***,³⁷ it was held that the determination of the question whether a provision is mandatory or directory would, in a ultimate analysis, depend upon the intent of the law maker and that has to be gathered not only from the phraseology of the provision but also by considering its nature, its design and the consequences which would follow from construing it in one way or the other.
27. A statute is to be read as a whole to extract its meaning and intendment correctly as held in ***Vijayawada Municipal Council vs. Andhra Pradesh State Electricity Board & Another***³⁸.
28. In ***Sharif-ud-Din v. Abdul Gani Lone***³⁹, the Hon'ble Supreme Court held that whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence, the provision has to be construed to be mandatory.
29. In ***Balwant Singh v. Anand Kumar Sharma***⁴⁰, three Hon'ble Judges of the Supreme Court held that whether a mandatory or directory construction should be given to a statutory provision may be determined by an expression in the statute itself of the result that shall follow non-compliance with the provision. As a corollary of the said rule it was stated that the fact that no consequences of non-compliance are stated in the statute has been considered as a factor tending towards a directory construction but that is only an element to be considered and is by no means conclusive. Hon'ble Supreme Court held thus-

“7. Yet there is another aspect of the matter which cannot be lost sight of. It is a well-settled principle that if a thing is required to be done by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public

³⁷ (1976) 2 SCC 895

³⁸ (1976) 4 SCC 548

³⁹ (1980) 1 SCC 403

⁴⁰ (2003) 3 SCC 433

function within a time-frame, the same will be held to be directory unless the consequences therefor are specified. In Sutherland's Statutory Construction, 3rd Edn., Vol. 3, at p. 107, it is pointed out that a statutory direction to private individuals should generally be considered as mandatory and that the rule is just the opposite to that which obtains with respect to public officers. Again, at p. 109, it is pointed out that often the question as to whether a mandatory or directory construction should be given to a statutory provision may be determined by an expression in the statute itself of the result that shall follow non-compliance with the provision. At p. 111 it is stated as follows:

“As a corollary of the rule outlined above, the fact that no consequences of non-compliance are stated in the statute, has been considered as a factor tending towards a directory construction. But this is only an element to be considered, and is by no means conclusive.”

(emphasis supplied)

30. In **State of Haryana vs. Raghubir Dayal**⁴¹, it was observed that the word “shall” ought to be construed not according to the language with which it is clothed but in the context in which it is used and the purpose it seeks to serve. The Hon’ble Supreme Court held thus-

“5. The use of the word ‘shall’ is ordinarily mandatory but it is sometimes not so interpreted if the scope of the enactment, on consequences to flow from such construction would not so demand. Normally, the word ‘shall’ prima facie ought to be considered mandatory but it is the function of the court to ascertain the real intention of the legislature by a careful examination of the whole scope of the statute, the purpose it seeks to serve and the consequences that would flow from the construction to be placed thereon. The word ‘shall’, therefore, ought to be construed not according to the language with which it is clothed but in the context in which it is used and the purpose it seeks to serve. The meaning has to be ascribed to the word ‘shall’ as mandatory or as directory, accordingly. Equally, it is settled law that when a statute is passed for the purpose of enabling the doing of something and prescribes the formalities which are to be attended for the purpose, those prescribed formalities which are essential to the validity of such thing, would be mandatory. However, if by holding them to be mandatory, serious general inconvenience is caused to innocent persons or general public, without very much furthering the object of the Act, the same would be construed as directory.”

(emphasis supplied)

⁴¹ (1995) 1 SCC 133

31. In **Debasish Paul** (supra) the Hon'ble Supreme Court reiterated the well settled proposition of law that the real intention of the legislation must be gathered from the language used. Use of the expression "shall" or "may" is not decisive for arriving at a finding as to whether the statute is directory or mandatory but the intention of the legislature must be found out from the scheme of the Act.
32. The Hon'ble Supreme Court in **Govindlal Chhaganlal Patel** (supra)⁴² held that the term "shall" in its ordinary significance is mandatory and the Court shall ordinarily give that interpretation to that term unless such an interpretation leads to some absurd or inconvenient significance or be at variance with the intent of the Legislature, to be collected from other parts of the Act. The construction of the said expression depends on the provisions of a particular act, the setting in which the expression appears, the object for which the direction is given, the significances that would flow from the infringement of the direction and such other conditions.
33. In **May George (supra)**⁴³ the Hon'ble Supreme Court after noticing several of its earlier decisions laid down the tests that are to be applied in order to declare a provision mandatory in paragraph 25 of the said reports.

"25. The law on this issue can be summarised to the effect that in order to declare a provision mandatory, the test to be applied is as to whether non-compliance with the provision could render the entire proceedings invalid or not. Whether the provision is mandatory or directory, depends upon the intent of the legislature and not upon the language for which the intent is clothed. The issue is to be examined having regard to the context, subject-matter and object of the statutory provisions in question. The Court may find out as to what would be the consequence which would flow from construing it in one way or the other and as to whether the statute provides for a contingency of the non-compliance with the provisions and as to whether the non-compliance is visited by small penalty or serious consequence would flow therefrom and as to whether a particular interpretation would defeat or frustrate the legislation and if the provision is mandatory, the act done in breach thereof will be invalid."

⁴² AIR 1976 SC 263

⁴³ (2010) 13 SCC 98

(emphasis supplied)

34. In ***State of Andhra Pradesh vs. Mohd. Hussain***⁴⁴, the Hon'ble Supreme Court held that it is a well settled canon of interpretation that when it comes to construction of a section, it is to be read in its entirety and its sub-sections are to be read in relation to each other, and not disjunctively. Besides, the text of the section has to be read in the context of the statute. It was further observed that a few subsections of a section cannot be separated from other sub-section, and read to convey something altogether different from the theme underlying the entire section. It was also held that a section has to be read purposively and meaningfully.
35. Keeping in mind the aforesaid well settled propositions of law, this Court shall now proceed to examine whether the provisions laid down under Section 3(2) of the 1948 Act are mandatory or not.
36. West Bengal Land (Requisition and Acquisition) Act, 1948 was enacted to provide for requisition and speedy acquisition of land for the purpose of maintaining supplies and services essential to the life of the community, increasing employment opportunities for the people by establishing commercial estates and industrial estates in different areas, providing proper facilities for transport, communication, irrigation or drainage and creating better living conditions in urban or rural areas by the construction or reconstructions of dwelling places in such areas or for purposes connected therewith and incidental thereto.
37. The power to requisition the property is vested upon the State Government under Section 3(1) of the 1948 Act. State Government could requisition the property upon formation of opinion that it is necessary for the purposes mentioned hereinbefore. Sub-section (1) of Section 3 states that the State Government may, by order in writing, requisition any land and may make

⁴⁴ (2014) 1 SCC 258

such further orders as appear to it to be necessary or expedient in connection with the requisitioning.

38. Sub-section (2) of Section 3 states that an order under sub-section (1) shall be served in the prescribed manner on the owner of the land and where the order relates to land in occupation of an occupier, not being the owner of the land, also on the occupier.
39. The mode of service of order passed under Section 3(1) of the 1948 Act is prescribed under Rule 3 of the West Bengal (Requisition & Acquisition) Rules, 1948.
40. Under the scheme of the 1948 Act, if there is a valid requisition, the State Government may use or deal with the land for the purposes referred to in Section 3(1). If such land is required for a public purpose referred to in Section 3(1), the State Government may acquire any land requisitioned by publishing a notice under Section 4(1a) in the Official Gazette.
41. Section 6 of the 1948 Act states that where any land requisitioned is not acquired and is to be released from requisition, the State Government may after making such inquiry, specify by order in writing, the person who appears to it to be entitled to the possession of such land.
42. For better appreciation, Section 3, 4 and 6 of the 1948 Act and Rule 3 of the 1948 Rules are extracted hereinafter.

“3. Power to requisition. (1) If the State Government is of the opinion that it is necessary so to do for maintaining supplies and services essential to the life of the community or for increasing employment opportunities for the people by establishing commercial estates and industrial estates in different areas or for providing proper facilities for transport, communication, irrigation or drainage, or for the creation of better living conditions in rural or urban areas, not being an industrial or other area excluded by the State Government by a notification in this behalf, by the construction or reconstruction of dwelling places in such areas or for purposes connected therewith or incidental thereto, the State Government may, by order in writing, requisition any land and may make such further orders as appear to it to be necessary or expedient in connection with the requisitioning:

Provided that no land used for the purpose of religious worship or used by an educational or charitable institution shall be requisitioned under this section.

(1A) A Collector of a district, an Additional District Magistrate or the First Land Acquisition Collector, Calcutta when authorised by the State Government in this behalf, may exercise within his jurisdiction the powers conferred by sub-section (1).

(2) An order under sub-section (1) shall be served in the prescribed manner on the owner of the land and where the order relates to land in occupation of an occupier, not being the owner of the land, also on such occupier.

(3) If any person fails to comply with an order made under sub-section (1), the Collector or any person authorised by him in writing in this behalf shall execute the order in such manner as he considers expedient and may.-

(a) if he is a Magistrate, enforce the delivery of possession of the land in respect of which the order has been made to himself, or

(b) if he is not a Magistrate, apply to a Magistrate or, in Calcutta as defined in clause (11) of section 5 of the Calcutta Municipal Act. 1951, to the Commissioner of Police, and such Magistrate or Commissioner, as the case may be, shall enforce the delivery of possession of such land to him."

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

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

(2) Where a notice as aforesaid is published in the Official Gazette, the requisitioned land shall, on and from the beginning of the day on which the notice is so published, vest absolutely in the 15 [State] Government free from all incumbrances and the period of requisition of such land shall end."

"6. Release from requisition.- *(1) Where any land requisitioned under section 3 is not acquired and is to be released from requisition, the [State] Government may, after making such inquiry, if any, as it considers necessary, specify by order in writing the person who appears to it to be entitled to the possession of such land.*

(2) The delivery of possession of such land to the person specified in the order made under sub-section (1) shall be a full discharge of any

liability of the [State] Government [for any claim for compensation or other claim in respect of such land for any period after the date of delivery] but shall not prejudice any right in respect of such land which any other person may be entitled by due process of law to enforce against the person to whom possession of the land is so delivered.

(3) Where the person [specified in the order made under sub-section (1)] cannot be found or is not readily traceable or has no agent or other person empowered to accept delivery on his behalf, the [State] Government shall publish in the Official Gazette a notice declaring that such land is released from requisition and shall cause a copy thereof to be affixed on some conspicuous part of such land.

(4) When a notice referred to in sub-section (3) is published in the Official Gazette, the land specified in such notice shall cease to be subject to requisition on and from the date of such publication and shall be deemed to have been delivered to the person [specified in the order made under sub-section (1)]; and the [State] Government shall not be liable for any compensation or other claims in respect of such land for any period after the said date."

43. Rule 3 of the West Bengal Land (Requisition and Acquisition) Rules, 1948 is set out hereunder:

"3. Manner of Service of Orders. *An order under sub-section (1) of section 3 shall be served on the owner of the land and where the order relates to land in occupation of an occupier not being the owner of the land, also on such occupier:*

(a) by delivering or tendering a copy thereof, endorsed either by the person authorised by the Act to make the order or by the Collector, to the person on whom the order is to be served or his agent, or

(b) by fixing a copy thereof on the outer door of some conspicuous part of the house in which the person on whom the order is to be served ordinarily resides or carries on business or personally works for gain, or

(c) by sending the same to the person on whom the order is to be served by registered post with acknowledgement due, or

(d) by fixing a copy thereof in some conspicuous part of the land to which the order relates and also in some conspicuous place of the office of the Collector."

44. An issue whether the 1948 Act is ultra vires the Constitution under Article 19(1)(f) read with Article 19(5) fell for consideration before the Constitution

Bench in ***S.M. Nandy and others vs. State of West Bengal and others***⁴⁵.

The Hon'ble Supreme Court after setting out the scheme of the Act noticed that the Act was enacted in order to provide for requisitioning and speedy acquisition of land for a number of public purposes.

45. The Hon'ble Supreme Court after noting the provisions of sub-sections (2) and (3) of Section 3 observed that there is nothing in the Act which prevents a person on whom an order has been served under subsection (2) to make a representation to the Collector or the State Government against the order of requisition.
46. The Hon'ble Supreme Court noted that the State Government may acquire any land requisitioned under the Act by publishing a notice in the Official Gazette that such land is required for a public purpose referred to in Section 3(1) and also that Section 6 enables the State Government to derequisition or release from requisition any land. The 1948 Act also provides for payment of fair compensation.
47. After noting the scheme of the 1948 Act, the Hon'ble Supreme Court held that it is difficult to hold that restrictions imposed by the 1948 Act are unreasonable. The Hon'ble Supreme Court held thus-

“8. We are, therefore, of the opinion that it is difficult to hold that restrictions imposed by the impugned Act are unreasonable. Fair compensation has been provided for requisitioning, which is determinable by a civil court and ultimately by the High Court or the Supreme Court. Regarding the necessity for requisitioning it must necessarily be left to the State Government. It is true that there is no express provision to make a representation against an order of requisition but there is no bar to a representation being made after an order is served under Section 3(2) of the Act. We have no doubt that if the representation raises a point which overrides the public purpose it would be favourably considered by the State Government or other Government authorities, as the case may be.”

(emphasis supplied)

⁴⁵ (1971) 1 SCC 688

48. The aforesaid proposition laid down by the Hon'ble Supreme Court in para 8 of **S.M.Nandy (supra)**⁴⁶ has been followed by the Hon'ble Division Bench in **Mihir Kumar Sarkar and others vs. State of West Bengal and others**⁴⁷. An issue was raised before the Hon'ble Division Bench in **Mihir Kumar Sarkar (supra)** whether the 1948 Act permits a requisition without giving even a hearing or opportunity to the person whose land is requisitioned. The said issue was answered by the Hon'ble Division Bench by holding that the order of requisition under the 1948 Act is not in the nature of an order in judicial proceeding and, therefore, absence of express provision for notice before requisition of land under Section 3 of the 1948 Act cannot ordinarily vitiate such requisition either on the ground of violation of the principles of natural justice or on the ground of infringement of fundamental rights of property under the Constitution of India.
49. The admitted factual position of the said reported case as noted in para 46 of the said reports is that the order of requisition dated November 5, 1969 was served on 7th November, 1969 calling upon the appellants therein to deliver possession on the following day. Such order of requisition was challenged inter alia on the ground that such action is highhanded giving no time or hardly any time to the appellants therein.
50. On such factual matrix the Hon'ble Division Bench in paragraph 46 of the reports held thus-

“46....In the very first instance, Section 3(1) as quoted above does not speak of any notice whatsoever. That section provides in Section 3(2) that the order shall be served in the prescribed manner on the owner or occupier of the land. That has been done. The statute, therefore, does not provide for any particular notice or any minimum period of notice. The requirements of Section 3(2) of the West Bengal Act have on the facts of this case been satisfied....”

(emphasis supplied)

⁴⁶ (1971) 1 SCC 688

⁴⁷ AIR 1972 Cal 8

51. To the mind of this Court, the said decision is not an authority for the proposition that the provisions of Section 3(2) are directory and not mandatory. On the contrary the Hon'ble Division Bench in paragraph 22 of the said reports after noticing Section 3(2) held that it appears from the said provision that it does not require notice to be given to the owner or occupier before the order of requisition is made although it requires that the order of requisition after having been made, shall be served in the prescribed manner on the owner and/or the occupier of the land. In the said reported case, the order under Section 3(1) was served and it was recorded that the requirements of Section 3(2) had been satisfied.
52. Sub-section (2) of Section 3 of the 1948 Act uses the expression "shall".
53. It is now judicially settled that the word "shall" is ordinarily mandatory but it is the function of the Court to ascertain the real intention of the legislature by a careful examination of the whole scope of the statute, the purpose it seeks to serve and the consequences that would flow from the construction to be placed thereon. It is equally settled that the Court shall ordinarily give that interpretation to that term unless such an interpretation leads to some absurd or inconvenient significance.
54. Sub-section (2) states that the order under Section 3(1) shall be served in any event on the owner and in addition to that it should also be served on the occupier if there is one, who is not the owner of the premises.
55. Sub-section (3) of Section 3 provides for execution of the order under Section 3(1) if any person fails to comply with such order.
56. Thus, if any person(s) has or have failed to place the premises in question at the disposal of the Government, then only possession can be taken by the Government in the manner as provided under clauses (a) or (b) of Section 3(3).
57. Section 3 of the 1948 Act enables the Government to requisition a property and also prescribes the formalities to be complied with viz. service of the

copy of the order under Section 3(1) for compliance of such order and in case of failure to comply, the consequences therefor are provided under Section 3(3).

58. When the Constitution of India came into effect on 26.01.1950, the right to property was a fundamental right under Article 19(1) (f) and acquisition and requisition of the property was guided by Article 31(1) and 31(2). Thus, a person could not have been deprived of his property save by the authority of law.
59. Article 300A was inserted by the Constitution (Forty fourth Amendment) Act, 1978 with effect from 20.06.1979 and Articles 19(1)(f) and 31 were accordingly omitted.
60. The effect of Article 300A fell for consideration before the Hon'ble Supreme Court in ***Jilubhai Nanbhai Khachar vs. State of Gujarat***⁴⁸ and it was held that Article 300A only limits the power of the State that no person shall be deprived of his property save by authority of law. There is no deprivation without due sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300A.
61. In ***Tukaram Kana Joshi (supra)***⁴⁹, the Hon'ble Supreme Court reiterated the observations in ***Jilubhai Nanbhai Khachar (supra)***⁵⁰ and held that even after the right to property ceased to be a fundamental right, taking possession of or acquiring the property of a citizen most certainly tantamount to deprivation and such deprivation can take place only in accordance with the "law" as the said word has specifically been used in Article 300A of the Constitution of India. It was further held that the right to property is now considered to be not only a constitutional right or a statutory right but also a human right.

⁴⁸ 1995 Supp(1) SCC 596

⁴⁹ (2013) 1 SCC 353

⁵⁰ 1995 Supp(1) SCC 596

62. Section 3 of the 1948 Act enables the State Government to requisition any land and to take possession of the same. The formalities that are to be complied with for such purpose have been specifically provided in the statute. Sub-section (2) of Section 3 provides that the order under Section 3(1) shall be served.
63. Service of such order would make the person aware that he has to comply with such order failing which the order shall be executed in the manner as provided under Section 3(3).
64. In case of acquisition of the requisitioned land, Section 4(1a) provides for publication of a notice in the Official Gazette.
65. However, there is no provision for publication of an order under Section 3(1) and the only mode of giving effect of the order under Section 3(1) is by way of service of such order upon the person concerned. If the service of the order under Section 3(1) is interpreted as directory and not mandatory, it may encourage taking over possession of property by way of arbitrary exercise of power by executives or administration.
66. It is now well settled that a person cannot be deprived of possession of his property by way of executive fiat or order or administrative caprice. Taking possession of a property without complying with the provision of Section 3(2) of the 1948 Act will amount to depriving a person of his right to possess the property without authority of law, as rightly argued by Mr. Bera.
67. At this stage it would be relevant to take note of the submission of Mr. Talukdar that Section 3(2) should be held to be directory as the statute does not provide for any consequences for non-compliance with the requirement of Section 3(2).
68. Even if the submission of Mr. Talukdar is accepted that no consequences of non-compliance of Section 3(2) have been provided in the statute, the same cannot come to the aid of the respondents as such factor is only one of the several factors that are to be taken into consideration to determine whether

a provision is directory or mandatory and the same cannot be said to be conclusive as held by Three Hon'ble Judges of the Supreme Court in **Balwant Singh (supra)**⁵¹.

69. In **May George (supra)**⁵², it was not in dispute that the notification under Section 4 and declaration under Section 6 of the Land Acquisition Act, 1894 were published in the newspaper and publicity as mandatorily required under the law was given. Award was made and possession of the land was taken. The award was challenged on the ground that notice under Section 9(3) had not been served.
70. On facts it was found that the notice under Section 9(3) was affixed on the part of the land in dispute as the appellant therein was not available as he was not a resident of the area. It was observed that if instead of "Smt." in the notice/ documents, she had been shown as "Thiru", that would be immaterial so far as the merit of the case was concerned.
71. Thus, **May George (supra)** dealt with a case of irregularity in service of notice under Section 9(3) and not non-service of notice.
72. In the backdrop of such factual matrix, the Hon'ble Supreme Court applied the well settled proposition of law that if there is an irregularity in service of notice under Section 9 and 10, it would be a curable defect and on that account, the award would not become invalid and accordingly refused to entertain a challenge to the award after an inordinate delay and vesting of the land in question.
73. However, a question of law fell for consideration in **May George (supra)** as to whether the provisions of Section 9(3) are mandatory in nature and non-compliance therewith would vitiate the award and subsequent proceedings under the Act.

⁵¹ (2003) 3 SCC 433

⁵² (2010) 13 SCC 98

74. While answering the said issue, the Hon'ble Supreme Court after noticing several decisions, in paragraph 25 of the reports summarized the law and laid down the tests to be applied for declaring a provision mandatory. It would be evident from paragraph 25 as extracted (*supra*), that one out of several tests is whether non-compliance with the provision could render the entire proceedings invalid or not. However, such factor is not conclusive as observed in ***Balwant Singh (supra)***⁵³.
75. By applying the proposition of law laid down in paragraph 25, the Hon'ble Supreme Court held that failure to issue notice under Section 9(3) would not adversely affect the subsequent proceedings including the award and the title of the Government in the acquired land. It was further observed that so far as the person interested is concerned, he is entitled only to receive the compensation and, therefore, there may be large number of disputes with regard to apportionment of compensation for which the aggrieved party may approach the Collector to make a reference to the Court.
76. The said decision is not an authority for the proposition that the provision of Section 3(2) of the 1948 Act is directory and not mandatory.
77. In ***M/s. Hunuikeri Bros (supra)***⁵⁴ it was held that omission to serve a notice under Section 9(3) of the Land Acquisition Act 1894 cannot be made the ground for an attack that the award to any extent is a void award.
78. In ***Saktipada Mondal***⁵⁵ (*supra*), it was held that the 1948 Act does not contemplate giving of a notice before an order of requisition is passed and if an order is passed under the said Act without giving such notice, then the order cannot be challenged in a writ proceeding on the ground of violation of the principles of natural justice.

⁵³ (2003) 3 SCC 433

⁵⁴ AIR 1962 Mys 169

⁵⁵ AIR 1976 Cal 282

79. In ***Mihir Kumar Sarkar (supra)***⁵⁶, the Hon'ble Division Bench reiterated the observations of the Constitution Bench in ***S.M.Nandy (supra)*** that although the 1948 Act does not expressly provide for a representation, yet there is nothing to prevent a representation being made after the order has been served. The Hon'ble Division Bench held that the view expressed by the Supreme Court is supported by a reference also to Section 6 of the 1948 Act providing expressly for releasing requisitioned land which "is not acquired" and "is to be released".
80. Thus, ***Mihir Kumar Sarkar (supra)*** also recognizes the right to make a representation after being served with the order of requisition. Recognition of right to make a representation would lead to an inference that non-service of the order passed under Section 3(1) would result in denial of right to make a representation against the order passed under Section 3(1).
81. A co-ordinate bench in ***Tarak Nath Sen (supra)*** held that Section 3(2) of the 1948 Act makes service of the notice in the prescribed manner on the owner mandatory and where the order of requisition relates to land in occupation of an occupier not being the owner of the land also on such occupier.
82. Another co-ordinate bench in ***Syed Fateyab Ali Meerza (supra)*** returned a factual finding that there was non-service of notice upon the occupier who were entitled to get a notice as occupier and accordingly held that such non-service of notice amounts to violation of the provisions of Section 3(2) of the 1948 Act.
83. In ***Bhinashar Finance (P) Ltd. (supra)***⁵⁷, a co-ordinate bench, after considering the scheme of the Act held that Section 3(2) is mandatory and the order under Section 3(1) could only be effective only on service as provided under sub-section (2) of Section 3 of the 1948 Act.

⁵⁶ AIR 1972 Cal 8

⁵⁷ (1992) 1 CLJ 222

84. The Hon'ble Division Bench in **Sailendra Nath Pal (supra)** noticed the decisions in the case of **Tarak Nath Sen (supra)**⁵⁸, **Syed Fateyab Ali Meerza (supra)** and **Bhinashar Finance (P) Ltd. (supra)**⁵⁹ and after recording a factual finding that pasting of a copy of the order under Section 3(1) of 1948 Act at a local primary school situated, not on the subject land, cannot be said to be in compliance with the provisions of Section 3(2) of the 1948 Act and Rule 3 of the 1948 Rules held that the order of requisition is not valid for non-compliance with the provisions of Section 3(2) of the 1948 Act and Rule 3 of the 1948 Rules. All subsequent steps taken for acquisition of the land in question were held to be invalid as under Section 4 of the 1948 Act, there could be acquisition of a land which has been properly requisitioned under Section 3.
85. The aforesaid discussion as well as the decision in **Sailendra Nath Pal (supra)** supports the view that the expression "shall" used in Section 3(2) has to be interpreted as mandatory.
86. However, after the hearing of this writ petition was concluded and the judgment was reserved, Mr. Talukdar mentioned this matter for placing reliance upon a recent judgment delivered by the Hon'ble Division Bench in the case of **Madhurina Mitra vs. State of West Bengal and others**⁶⁰.
87. The parties were invited to make their respective arguments on the applicability or otherwise of the said decision.
88. In **Madhurina Mitra (supra)**, the Hon'ble Division Bench held that the proposition laid down in **Sailendra Nath Pal (supra)** is *per incuriam*, being contrary to that enunciated in **Mihir Kumar Sarkar (supra)**, which was rendered by a still earlier equal strength bench of this Court, and impliedly

⁵⁸ (1983) 1 CLJ 371

⁵⁹ (1992) 1 CLJ 222

⁶⁰ 2026 SCC Online Cal 817.

overruled by the proposition laid down subsequently in **May George (supra)** by the Hon'ble Supreme Court. The Hon'ble Division Bench held that non-service of a notice under Section 3(2) of the 1948 Act does not vitiate the requisition and/or subsequent acquisition proceeding.

89. The Hon'ble Division Bench held that although sub-section (2) of Section 3 provides for service of such order in the prescribed manner on the owner or occupier of land, there is no sanction provided in the statute for non-observance of such provision. It was further held that the purpose of a notice under sub-section (2) is only to notify a person that possession of the land would be taken.
90. The decision in **Madhurina Mitra⁶¹ (supra)** is a binding precedent. It, therefore, follows that alleged non-service of the order in the manner as required under Section 3(2) did not vitiate the requisition and/or the subsequent acquisition proceeding.
91. This Court has to now consider whether the petitioner is entitled to any relief.
92. Petitioners claim that their predecessor-in-interest purchased a portion of plot no. 2454/2759 which was fully covered by structure by virtue of a registered deed of conveyance dated April 30, 1968. In the recitals of the said deed it is specifically stated that one Nagendra Nath Das i.e., the vendor of the predecessor-in-interest of the petitioner was the recorded owner of the plot being Dag no. 2454/2759 measuring an area of more or less 0.88 acres and the said land was a paddy land. The said Nagendra Nath Das divided the said plot into smaller plots for transferring the smaller plots to different persons. By virtue of the registered deed of conveyance dated April 30, 1968, Nagendra Nath Das sold and transferred a portion of Dag No. 2454/2759 R.S. Khatian No. 191 within Mouja Kasba being plot no. 11 of the Development Scheme as depicted in the Sketch map appended thereto measuring an area more or less 3 Cottahs 2 Chittacks and 5 square feet in

⁶¹ 2026 SCC Online Cal 817

favour of Pramatha Ranjan Dutta i.e., the predecessor-in-interest of the petitioners.

93. From the recitals of the said deed of conveyance, it is evident that the property which was the subject matter of the deed of conveyance was a paddy land and there is no mention about the existence of any structure in the said deed.
94. In view thereof, this Court is not inclined to accept the contention of the petitioners that their predecessor-in-interest purchased the property fully covered by structure.
95. Record reveals that Plot no. 2454/2759 was requisitioned by an order under Section 3(1) of the 1948 Act by virtue of L.A. Case no. LA/II/105 of 1976-97 and the possession of an area measuring about 0.82 acres of the said plot excluding the area covered by structure was handed over to the CMDA now KMDA on 15.05.1978. Notice under Section 4(1a) of the 1948 Act was published in the Calcutta Gazette Extraordinary dated 21.11.1983. Award was declared for the Sali land measuring 0.82 acres of R.S. Plot no. 2759, R.S. Khatian No. 191 within mouja Kasba. From the relevant portion of the said Award which has been annexed to the writ petition it is evident that Promotho Ranjan Datta was one of the awardees in respect of R.S. Dag no. 2759(P), R.S. Khatian No. 191.
96. Specific stand of the State as reflected in the report filed by the Special Land Acquisition Officer, 24 Parganas (South) dated 13.10.2025, is that the award money amounting to Rs. 1,13, 913.19/- has been deposited in the Court of the Learned Special L.A. Judge at Alipore.
97. L.A. case being no. LA/II/2 of 1993-94 was subsequently initiated for the purpose of taking over possession of the structural portion of R.S. Plot no. 2759 measuring an area of 0.06 acres. The possession of the said portion was handed over to the Requiring Body on 31.03.1994. Notice under Section 4(1) of the 1948 Act was published in the Calcutta Gazette Extraordinary dated 13.10.1995. The acquisition proceeding was thereafter carried forward

by issuing a notice under Section 9(3A) of the Land Acquisition (West Bengal Amendment) Act 1997 to Nagendranath Das. Award was declared in favour of Nagendranath Das in respect of plot no. 2454/2759, Khatian No. 191 measuring an area of 0.06 acres under Award Serial No. 54. It is the specific stand of the State as reflected in the report of the special Land Acquisition Officer 24 Parganas (South) dated 13.10.2025 that since the award amounting to Rs. 2,81,814.82 could not be verified, the same was deposited in the Court of the learned Special LA Judge at Alipore.

98. The aforesaid factual position as stated in the said report could not be controverted by the petitioners by production of any records. Though the learned advocate appearing for the petitioner in course of his argument vehemently contended that the portion of the plot no. 2454/2759 which was purchased by the predecessor-in-interest of the petitioners was out of the acquisition proceedings as the same was covered by structures, no material has been produced by the petitioners before this Court to substantiate the point of time when the structures were constructed subsequent to the purchase of the property by Pramatha Ranjan Dutta since deceased, as this Court has already observed that there was no existence of any structure on the plot in question at the time of purchase by Pramatha Ranjan Dutta.
99. Record further reveals that the petitioners through their learned advocate's letter dated March 17, 2022 requested the authority of KMDA to make an arrangement for holding a joint field demarcation for getting a clear picture with regard to the acquisition of land being Dag no. 2454/2759. In the said representation it was stated that though the petitioners are joint owners of piece and parcel of a land measuring 3 Cottahs 2 Chittacks and 5 square feet which was fully covered by structure since the date of purchase of the same by the purchaser-in-interest but the acquiring authority only exempted two and a half Cottahs of land though the entire plot of land measuring 3 Cottahs 2 Chittacks 5 square feet is required to be exempted as having structure over the entire plot.

100. Alleging inaction on the part of the respondent authorities, petitioners filed a writ petition being no. 8357/2022. Pursuant to the direction passed by the co-ordinate bench in the said writ petition, the respondent authorities filed reports in the form of an affidavit. Petitioner claims that upon going through the said reports in the form of an affidavit the petitioners came to learn that the entire plot in question being Dag no. 2454/2759 comprising 0.88 acres has been acquired by the State respondents. The learned advocate for the petitioners submitted before the co-ordinate bench in WPA 8357 of 2022 that such knowledge of the petitioners gave rise to a fresh cause of action for which the petitioners sought to challenge the acquisition into LA/II/2 of 1993-94 in respect of 0.06 acres of plot. On the basis of such submission the petitioner sought to withdraw the writ petition and the co-ordinate bench, by an order dated 19th July, 2023, dismissed WPA 8357/2022 for non-prosecution.
101. Thereafter, the instant writ petition has been filed challenging the notification published in connection with LA Case No. LA/II/2 of 1993-94 and for a direction upon the respondent authorities to release the property of the petitioners from the scope and ambit of the said acquisition proceeding.
102. Mr. Chakraborty, learned advocate for the petitioner would contend that since the order under Section 3(1) of 1948 Act was not served upon the petitioners or their predecessor-in-interest the petitioners were not aware of the requisition proceeding.
103. No material has been produced before this Court by the petitioners to show that the name of their predecessor-in-interest was duly recorded in the record of rights at the relevant point of time when the property was requisitioned. That apart the notice under Section 4(1a) in respect of the acquisition of 0.82 acres of plot no. 2759 was published in the Calcutta Gazette Extraordinary dated November 21, 1983 and the name of the predecessor-in-interest was recorded as an awardee in respect of plot no. 2759 under R.S. Khatian No. 191 vide award Serial No. 30. Thus, it shall be

presumed that the predecessor-in-interest of the petitioners was aware of the publication of the notice under Section 4(1a) of the 1948 Act and produced materials in support of his right, title and interest in respect of the plot in question and accordingly the name of the predecessor-in-interest of the petitioner was recorded as an awardee in respect of the said plot in question. Subsequently notice under Section 4(1a) of the 1948 Act for acquisition of 0.06 acres in plot no. 2759 was published in the Calcutta Gazette Extraordinary dated February 13, 1995. From the bare reading of the aforesaid notice issued under Section 4(1a) it is evident that the entire plot being R.S. Dag No. 2759 measuring about 0.88 acres was acquired in totality in two phases.

104. No acceptable reason has been assigned by the petitioners as to what prevented the petitioners from challenging the acquisition proceedings being LA Case being no. LA/II/2 of 1993-94 at the relevant point of time.
105. After a lapse of about more than 26 years from the date of publication of the last notice under Section 4(1a) of the 1948 Act the petitioners approached a co-ordinate bench by filing WPA 8357 of 2022 praying for demarcation of the acquired portion of the plot in question and after withdrawing the said writ petition has filed the instant writ petition only in the month of August, 2025.
106. In ***Sawaran Lata (supra)***⁶², the Hon'ble Supreme Court after noting that the only ground taken in the writ petition has been that substance of the notification under Section 4 and declaration under Section 6 of the 1894 Act had been published in the newspapers having no wide circulation held that it cannot be presumed that they could not be aware of the proceedings for the reason that a very large chunk of land belonging to a large number of tenure holders had been notified for acquisition.

⁶² (2010) 4 SCC 532

107. In ***Parag Construction (supra)***⁶³, the scheme in question was finalized in 1978 and the Notification was published in the Official Gazette in the year 1979. The appellant therein claimed to have purchased the property by auction sale under the Certificate of Sale dated 24.09.1981. On the facts of the said reported case, the Hon'ble Supreme Court observed that when the appellants were bound to enquire about the properties which they had allegedly purchased in Court auction and also that the appellants maintained a sinister silence right from 1983 till they ultimately filed the petition in the year 2006. The Hon'ble Supreme Court ultimately concluded that the petition was hopelessly barred.
108. In ***Leelawanti (supra)***⁶⁴, the Hon'ble Supreme Court noticed that the appellants therein challenged the acquisition of land but did not offer any explanation for the long time gap of more than three decades between the issuance of notifications under Section 4 and declaration under Section 6 in the year 1976 and filing of the writ petition in the year 2007. After noting the aforesaid facts, the Hon'ble Supreme Court applied the doctrine of laches for negating the challenge to the acquisition of land.
109. From the aforesaid discussion, it follows that if an acquisition of land is challenged after a long time gap between the issuance of notifications and declarations under the relevant statute, as the case may be without offering any explanation for the long time gap, the doctrine of laches can be invoked to negate such challenge.
110. In the case on hand, this Court has already held that no acceptable reason has been assigned for the long delay in approaching this Court. This Court accordingly holds that the instant writ petition is hopelessly belated.

⁶³ (2008) 16 SCC 198

⁶⁴ (2012) 1 SCC 66

111. With the publication of the notice under Section 4(1a) of the 1948 Act, the requisitioned land vested absolutely in the State Government free from all incumbrances on and from the beginning of the day on which the said notice was published. This Court, therefore, holds that the entire plot no. 2759 total measuring about 0.88 acres vested absolutely with the State Government free from all incumbrances.
112. It is now well settled that property once vested to the State cannot be divested. In this regard it would be beneficial to take note of the observations of the Hon'ble Supreme Court in the case of **Indore Development Authority vs. Sailendra**⁶⁵, the Hon'ble Supreme Court held that-

*“30.The word “vest” fell for consideration before the Hon’ble Supreme Court in the case of **Fruit & Vegetable Merchants Union vs. Delhi Improvement Trust** reported at (1996) 3 SCC 124, wherein it was held that the word “vest” means the property acquired becomes the property of the Government without any condition or limitation either as to title or possession. Thus, when there is absolute vesting in the State it is vesting along with possession and thereafter a person who remains in possession is only a trespasser without any rightful possession. It was further held that vesting contemplates absolute title and possession in the State. The said proposition of law has been reiterated by the Hon’ble Supreme Court in the case of **Indore Development Authority vs. Sailendra** (see paragraph 94 and 95 of the said reports).”*

113. A question fell for consideration before the Hon'ble Supreme Court in **S. Palani Velayutham (supra)**⁶⁶ as to whether a vested remainderman of acquired land was entitled to notice of acquisition, even if their names were not entered in the revenue records. The Hon'ble Supreme Court held that the Collector is not expected to hold mini enquiries whether the persons whose names are disclosed, (other than those whose names are entered into the revenue records) are persons interested in acquired land or not. It was

⁶⁵ (2018) 3 SCC 405

⁶⁶ (2009) 10 SCC 664

further held that the Collector does not have any obligation to issue notice to persons whose names are not entered in the revenue records.

114. As observed hereinbefore no material has been produced by the petitioner before this Court to show that the name of their predecessor-in-interest was recorded in the revenue records at the relevant point of time. That apart, the plot in question was a Sali land and this Court has already held that no material has been produced to show that the entire land was covered with structures.
115. Recording of the name of the predecessor-in-interest of the petitioners in the award passed in LA/II/105 of 1976-77 under award Serial No. 30 in respect of the plot of land being R.S. Dag No. 2759 measuring about 0.82 acres under R.S. Khatian no. 191 goes to show that the predecessor-in-interest of the petitioner was well aware of the proceedings initiated by the Government in respect of the plot in question but maintained a sinister silence from the date of issuance of acquisition notification till the date of filing the writ petition.
116. The challenge to the acquisition proceedings being LA Case No. LA/II/2 of 1993-94 in respect of the 0.06 acres of land in plot no. 2759 is only on the ground that all subsequent steps taken for acquisition of the land is invalid as there has been no proper requisition of the land.
117. At such a belated stage and in view of the observations made hereinbefore, this Court is not inclined to entertain a challenge as to the validity of acquisition proceeding.
118. This Court, accordingly, holds that the petitioner has failed to demonstrate that the order of requisition under Section 3(1) of the 1948 Act is not valid and effective under the law.
119. For all the reasons as aforesaid, this Court is not inclined to accept the submission of the learned advocate for the petitioner that the acquisition proceeding should be declared null and void.

120. Section 6 of the 1948 Act provides for release from requisition where any land requisitioned under Section 3 is not acquired. In the case on hand, the land in question requisitioned under Section 3 of the 1948 Act was acquired in accordance with law and the properties stood vested to the State free from all incumbrances.
121. Thus, there is no scope to release the property in question or any portion thereof to the petitioners.
122. Mr. Chakraborty learned advocate for the petitioner would contend that the name of the petitioner has been recorded in the records of the Kolkata Municipal Corporation as well as in the record of rights.
123. In the case on hand the property in question being Dag No. 2759 stood vested with the State free from all incumbrances. Thus, the right, title and interest of the erstwhile owner stood extinguished and the Government became the absolute owner of the property free from all incumbrances.
124. The Hon'ble Supreme Court in ***Sadhu Ram (supra)***⁶⁷ held that when the Government became the absolute owner of the property free from all incumbrances, unless the title is conferred on any person in accordance with a procedure known to law, no one can claim any title much less equitable title by remaining in possession. It was further held therein that the Government is not bound by the entries made in the record of rights as title cannot be conferred merely by virtue of mutation. Since the property stood vested with the Government free from all incumbrances, the petitioners cannot claim any title by claiming to be in possession thereof.
125. In ***Bimal Kumar Shah (supra)***⁶⁸ an issue with regard to legality and validity of acquisition of the property in exercise of power under Section 352 of Kolkata Municipal Corporation Act 1980 was raised. While dealing with the said issue the Hon'ble Supreme Court held that Section 352 of the

⁶⁷ (1997) 9 SCC 544

⁶⁸ (2024) 10 SCC 533

Kolkata Municipal Corporation Act has only intended to enable the Municipal Commissioner to decide whether an amount is to be acquired for public purpose and the power of acquisition is in fact vested with the State under Section 537 and it will exercise it, in its own discretion whenever the Municipal Commissioner makes an application to that effect. It was further held that Section 362 is not a provision for compensation for compulsory acquisition. The said decision being distinguishable on facts, have no manner of application to the case on hand.

126. There is no quarrel to the proposition of law laid down by the Hon'ble Supreme Court in ***Ultratech Cement Ltd.***⁶⁹ that when the acquisition of land for public purpose is undertaken under the power of eminent domain of the Government much against the wishes of the owners of the land which gets acquired, such power is coupled with a bounden duty and obligation on the part of the government body to ensure that the owners whose lands get acquired are paid compensation / awarded amount as declared by the statutory award at the earliest. On the facts of that case it was found that the delay in payment of compensation to the land owners after taking away ownership of the land from them was in contravention to the constitutional scheme of Article 300A and the idea of a welfare State.
127. In the case on hand an award has already been declared and the name of the predecessor-in-interest of the petitioners appears in the list of the awardees and in case the predecessor-in-interest of the petitioners or the petitioners had any objection as to the determination of the compensation or apportionment thereof it was open for them to take steps in accordance with law. The aforesaid decision being distinguishable on facts also cannot come to the aid of the petitioners in the case on hand.
128. There is no quarrel to the proposition of law laid down in ***Punjab Land Development and Reclamation Corpn. (supra)***⁷⁰ that a decision can be

⁶⁹ (2025) 1 SCC 798

⁷⁰ (1990) 3 SCC 682

said generally to be given *per incuriam* when the Hon'ble Supreme Court has acted in ignorance of a previous decision of its own or when a High Court has acted in ignorance of a decision of the Hon'ble Supreme Court.

129. In ***Star Wire (India) Ltd. (supra)***⁷¹ the property covered by the notification under Section 4(1) was purchased after the said notification was published and on such facts it was held that such a person has no right to challenge the acquisition proceedings much less the award. The said decision being distinguishable on facts cannot be of any assistance to the respondent authority.
130. In ***U.P. Jal Nigam (supra)***⁷² the Hon'ble Supreme Court refused to extend similar reliefs to persons who have approached at a belated stage i.e., after their retirement from service. The said decision being rendered in a service matter cannot come to the aid of the respondents in the case on hand.
131. In ***Mahavir (supra)***⁷³ a writ petition was filed 105 years after the award was passed alleging that compensation has not been paid and in view of the operation of the provisions of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2003, the land acquisition has lapsed. The said decision being distinguishable on facts cannot have any manner of application to the case on hand.
132. In ***Vidya Devi (supra)***⁷⁴, an illiterate widow coming from a rural area was deprived of her private property by the State without resorting to the procedure prescribe by law. On such facts the Hon'ble Supreme Court held that the cause of action in the said reported case was a continuing one as the appellant therein was compulsorily expropriated of her property without

⁷¹ (1996) 11 SCC 698

⁷² (2006) 11 SCC 464

⁷³ (2018) 3 SCC 588

⁷⁴ (2020) 2 SCC 569

following due process of law and the demand for justice was compelling and it also shocked the judicial conscience.

133. The said decision being distinguishable on facts cannot come to the aid of the petitioner.
134. For all the reasons as aforesaid this Court is not inclined to grant any relief to the petitioners. Accordingly, the writ petition stands dismissed.
135. There shall be, however, no order as to costs.
136. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.
137. Before parting, this Court places on record its appreciation for the valuable assistance rendered by the learned *Amicus Curiae*, Mr. Debayan Bera, learned advocate in the present case.

(HIRANMAY BHATTACHARYYA, J.)