
(2024) 05 GAU CK 0076

In the Gauhati High Court

Case No : Writ Petition (C) No. 5689, 6512 Of 2007, 1925 Of 2009, 2300 Of 2010, 2872 Of 2013

A Indu Devi,B Jitendra Nath Sarma,B Himakshi Sharma And
Anr.

APPELLANT

Vs

State Of Assam And Ors

RESPONDENT

Date of Decision : 06-05-2024

Acts Referred:

Constitution Of India, 1950 — Article 21, 265, 300A

Land Acquisition Act, 1894 — Section 4, 4(1), 5A, 6, 6(1), 9, 11, 16, 18, 23(1), 23(1), 30, 34, 35

Citation : (2024) 05 GAU CK 0076

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : P. K. Roy, H. Das, S. K. Chakraborty, S. Baruah, R. Borpujari, S. R. Baruah, D. Nath, P. Nayak

Final Decision : Disposed Of

Judgement

1. All the 5 (five) writ petitions are taken up together for disposal vide this common judgment and order taking into account the similarity of the facts involved and the dispute being commonly placed.

2. One Priyanath Sarma (since deceased) had purchased a plot of land measuring 32 Bighas 4 Kathas 14 Lechas covered by Dag Nos. 273, 304, 305, 306, 594, 779 and 780 of N.K. Patta No.9 of Village Gorpandu, Kumarpara under Mouza Ramcharani vide a registered Deed of Sale bearing Deed No.813/39 dated 21.04.1939. Pursuant to the settlement operations being carried out, the said land fell into N.K. Patta No.14. During the lifetime of Late Priyanath Sarma, he sold land to various persons and the remaining land which was left was 10 Bighas 1 Kathas 10 Lechas in Dag No.146 covered by N.K. Patta No.14 under Mouza Jalukbari. Late Priyanath Sarma had 5 (five) sons namely Late Muktinath Sarma, Late Debendra Nath Sarma, Late Pitambar Sarma, Late Joynath Sarma and Late Gopinath Sarma. Late Gopinath Sarma expired unmarried. Upon the

death of the legal heirs of Late Priyanath Sarma, their legal heirs succeeded to the land measuring 10 Bighas 1 Kathas 10 Lechas by way of inheritance and claimed to be in possession of the same by paying the land revenue. The above details are mentioned herein on the basis of the statements made in WP(C) No.5689/2007 and the same shall not be construed as findings of facts by this Court.

3. Be that as it may, prior to the death of the legal heirs of Late Priyanath Sarma, the Collector of Kamrup District (as it then was) vide a Memo No. LA.3/86 dated 22.10.1986 requisitioned 59 Bighas 0 Kathas 10 Lechas of land for the purpose of construction of the Public Bus Terminus at Gorpandu (Adabari) on the basis of the proposal of the Guwahati Municipal Corporation. In that process, 9 Bighas 3 Kathas 0 Lechas of land covered by Dag No.146 of N.K. Patta No.14 was requisitioned. The Guwahati Municipal Corporation thereupon constructed the bus terminus way back in the year 1988 and it was mentioned in the aforementioned Memo dated 25.10.1986 that the land was handed over to the Respondent No.4 i.e. the Commissioner, Guwahati Municipal Corporation for carrying out the construction of the bus terminus.

4. On 29.03.2004, a purported letter was written by the Commissioner, Guwahati Municipal Corporation to the Deputy Commissioner, (Metro), Guwahati on the basis of an application being filed by one Smti Charu Devi, wife of Late Pitambar Sarma stating inter alia that the said application was duly reviewed. It was informed to the Deputy Commissioner (Metro), Guwahati vide the said communication that the land measuring 9 Bighas 3 Kathas 0 Lechas in Dag No.146 of N.K. Patta No.14 can be freed from requisition from the end of the Deputy Commissioner, (Metro), Guwahati.

5. The record further reveals that on the basis of the said communication purportedly issued by the Commissioner, Guwahati Municipal Corporation, an application was filed by the Petitioner Nos. 1 to 5 in WP(C) No.5689/2007 along with Smti Charu Devi for release of a plot of land measuring 7 Bighas 0 Katha 14 Lechas covered by Dag No.146 of N.K. Patta No.14 from requisition in connection with L.A. Case No.3/86. Pursuant thereto, the Additional Deputy Commissioner, Kamrup (Metro) Guwahati issued an order dated 30.11.2005 thereby de-requisitioning the land measuring 7 Bighas 0 Kathas 14 Lechas under Dag No.146 of N.K. Patta No.14 of village Gorpandu, Kumarpara under Jalukbari Mouza (hereinafter referred to as "the land in question") in exercise of the powers under the Assam Land (Requisition and Acquisition) Act, 1964 (for short "the Act of 1964") with immediate effect. In the said order, it was also mentioned that the Secretary, Revenue (LR) Department and the Commissioner, Guwahati Municipal Corporation were to be informed and the Circle Officer, Guwahati Revenue Circle was directed to hand over the possession to the pattadars concerned.

6. The Petitioner Nos. 1 to 5 thereupon applied for sale permission for selling land from Dag No.146 of N.K. Patta No.14 in respect to the land which was not a

part of the requisition process. The Sub-Divisional Officer, Sadar issued two sale permissions in favour of the Petitioner Nos. 1 to 5 to sale lands to the various purchasers. Thereupon, the said Petitioner Nos. 1 to 5 transferred vide various Deed of Sale, lands measuring 2 Bighas 3 Kathas 14 Lechas to the Petitioner Nos. 6 to 31. The Petitioner Nos.6 to 31 thereupon after taking possession, raised temporary structures and also demarcated their respective plots with bamboo fencing. At around this time, an important development took place i.e. on 02.02.2006, an order was passed by the Deputy Commissioner cum Collector, Kamrup (M) wherein the order dated 30.11.2005 passed by the Additional Deputy Commissioner, Kamrup (M) was duly taken into consideration and on the basis thereof sought to acquire in L.A. Case No.3/86 an area of land measuring 52 Bighas 1 Kathas 8 Lechas thereby leaving aside the land in question. It was further mentioned in the said order that the said land was to be acquired for construction of the park.

7. It was alleged in WP(C) No.5689/2007 that a Counsellor of Ward No.VI of Guwahati Municipal Corporation contacted the Petitioner No.1 of the said writ petition demanding an amount of Rs.60,00,000/- for the event of the Congress and further threatening that in case of failure to make the payment, the Petitioners would be evicted. This threat and the demand was brought to the attention of the other Petitioners by the Petitioner No.1 who rejected the said threat and demand and did not pay the amount of Rs.60,00,000/-. It was further alleged in WP(C) No.5689/2007 that on 24.10.2007, at about 11:30 AM, the Respondent Nos.7 and 8 in the said proceedings came with police force and demolished the houses of the Petitioners, the bamboo fences demarcating the respective plots and forcefully took over the possession of the land in question without even providing any seizure list. An F.I.R. was filed on 25.10.2007 by the Petitioners but to no effect. In addition to that, the Petitioners also submitted a representation. Challenging the said illegal dispossession on 24.10.2007, WP(C) No.5689/2007 was filed on 29.10.2007 and this Court vide an order dated 30.10.2007 fixed the matter on 06.11.2007 and directed the Respondent Authorities in the said writ petition not to change the character of the land taken over from the Petitioners. It was also made clear by this Court that the Deputy Commissioner, Kamrup (M) may in the meantime consider and dispose of the representation filed by the Petitioners.

8. Before the next date so fixed by this Court in WP(C) No.5689/2007, the Deputy Commissioner, Kamrup (M) rejected the said representation vide an order dated 01.11.2007 holding inter alia that the Additional Deputy Commissioner had no authority or jurisdiction to pass the order dated 30.11.2005 in Requisition Case No.3/86 (LA-3/86) and the order of the Additional Deputy Commissioner was invalid and illegal. It was also mentioned in the order dated 01.11.2007 that the possession of the land was taken over soon after the land was requisitioned and at no stage, it was given back to the pattadars and therefore, the question of dispossession and restitution of the pattadars in Dag No.146 did not arise.

9. A writ petition being WP(C) No.6512/2007 was filed challenging the order dated 01.11.2007 and again sought for a direction for restoration of the possession of the land measuring 7 Bighas 0 Katha 14 Lechas covered by Dag No.146 of N.K. Patta No.14 to the Petitioners. The second writ petition i.e. WP(C) No.6512/2007 was filed on 18.12.2007 and this Court vide an order dated 20.12.2007 issued notice making it returnable on 28.01.2008 and tagged WP(C) No.6512/2007 with WP(C) No.5689/2007. The interim order which was passed on 30.10.2007 in WP(C) No.5689/2007 was directed to continue as would be apparent from the records.

10. While the above two writ petitions were pending, another development took place whereby two persons claiming themselves as co-pattadars and the Attorney holders of 17 other co-pattadars in respect to the land measuring 9 Bighas 3 Katha 0 Lechas contained in Dag no 146 of N. K. Patta No 14 which included the land in question filed a writ petition which was registered and numbered as WP(C) No.1925/2009 seeking directions that they would be entitled to requisition compensation for the entire 9 Bighas 3 Kathas 0 Lechas of land which was requisitioned on 22.10.1986 along with interest; challenging the letter dated 29.03.2004 purportedly issued by the Commissioner, Guwahati Municipal Corporation; the order dated 30.11.2005 passed by the Additional Deputy Commissioner, Kamrup (M) at Guwahati as well as the sale permissions so issued in favour of the Petitioner Nos. 1 to 5 of the earlier writ petitions were also challenged. The Petitioners in WP(C) No.1925/2009 also challenged the Deeds of Sale which were executed in favour of the Petitioner Nos.6 to 31 in WP(C) No.5689/2007. This writ petition was filed on 13.05.2009 and this Court vide an order dated 18.05.2009 issued Rule. A prima facie glance of the contents of the said writ petition i.e. WP(C) No.1925/2009 would show that those Petitioners claimed independent rights over the land measuring 9 Bighas 3 Kathas 0 Lechas from that of the Petitioners of the earlier two writ petitions. It prime facie transpires that the disputes so raised in W.P.(C) No 1925/2009 are disputes inter se between the Petitioners therein and the private respondents and in view of such disputes the official respondents have been entangled.

11. While the above three writ petitions were pending, another event took place. An order was passed on 06.03.2010 by the Deputy Commissioner cum Collector, Kamrup (M) District whereby the order of the Additional Deputy Commissioner, Kamrup (M) dated 30.11.2005 by which the land was de-requisitioned was formally cancelled and the land measuring 7 Bighas 0 Kathas 14 Lechas covered by Dag No.146 of N.K. Patta No.14 of Village Gorpandu, Kumarpara under Jalukbari Mouza was held to continue to be under requisition for the purpose of construction of the Adabari Bus Stand by the Guwahati Municipal Corporation w.e.f. 22.10.1986. This order dated 06.03.2010 was challenged by the Petitioners in WP(C) No.5689/2007 by filing another writ petition on 07.04.2010 which was registered and numbered as WP(C) No. 2300/2010. It is very pertinent to take note of a very important development which ensued thereupon inasmuch as this Court vide an order dated 09.04.2010 issued Rule making it

returnable on 05.05.2010 and an order of status quo as regards the land in question was directed to be maintained. It would also be seen that on 05.05.2010, the interim order passed on 09.04.2010 was directed to continue until the next date. However, it is relevant to take note of that there was no date fixed on 05.05.2010 as to what would be the next date. These orders are very relevant as the said orders lays the foundation of a subsequent writ petition which this Court would deal at the later stage of the narration herein.

12. The record shows that the said writ petition being WP(C) No.2300/2010 came up before this Court on 26.08.2013 and there was nothing mentioned on that date by this Court as regards extending the interim order in the said proceedings.

13. The aforementioned writ petitions thereafter remained pending before this Court. One of the Petitioners in WP(C) No.5689/2007 claimed that he visited the Office of the Deputy Commissioner cum Collector, Kamrup (M) and came to learn about the publication of a notice related to the land in question whereby the Deputy Secretary to the Government of Assam, Revenue and Disaster Management Department had issued an order under Memo No. RLA.169/2007/Pt/16 dated 06.08.2011 by which it was notified under Section 4 of the Land Acquisition Act, 1894 (for short "the Act of 1894") that the land measuring 7 Bighas 0 Kathas 14 Lechas in village Gorpandu, Kumarpara which was the land in question was likely to be needed for public purpose i.e. for construction of Adabari Bus Station. It was also mentioned in the said communication that the urgency provision having been invoked the provisions of Section 5A of the Act of 1894 were dispensed with. The said notification was published in the Assam Tribune on 04.12.2011. Primarily on the ground that the said notification was issued in violation of the order passed by this Court in WP(C) No.2300/2010 and there was no reason for acquiring the said land after the Government had withdrawn from the land in question, the Petitioners in WP(C) No.5689/2007 yet again filed another writ petition which was registered and numbered as WP(C) No.2872/2013 challenging the notification dated 06.08.2011 and all other subsequent acts done in pursuance to the said notification. The said writ petition was filed on 02.05.2013 and this Court vide an order dated 22.07.2013 directed the listing of the said writ petition along with WP(C) No.1925/2009 and the interim order which was passed in WP(C) No.2300/2010 was directed to continue. Vide a subsequent order dated 07.06.2013 in WP(C) No.2872/2013, notice was issued by this Court.

14. This Court finds it very pertinent to take note of that the Deputy Commissioner, Kamrup (M) had filed various affidavits in the proceedings and their consistent stand was that the Additional District Commissioner did not have the power and authority to de-requisition any land and as such, the order dated 30.11.2005 was without any authority and jurisdiction. It was also the categorical stand of the Deputy Commissioner, Kamrup (M) that no possession was handed over by the Office of the Deputy Commissioner back to the pattadars

and as such, the question of dispossession of pattadars which was alleged in first writ petition i.e. in WP(C) No.5689/2007 is completely false. Be that as it may, this Court finds it very pertinent to take note of a detailed affidavit which was filed in WP(C) No.1925/2009 by the Additional Deputy Commissioner, In-charge, Land Acquisition Branch on 07.11.2023 as it contains the consolidated stand of the Respondent Authorities. It was mentioned in the said affidavit that land measuring 52 Bighas 1 Kathas 8 Lechas was already acquired vide LA Case No.3/86 for construction of Adabari Bus Stand (Park), village Gorpandu, Kumarpara as per the provisions of the Act of 1894. It was mentioned that the Government approved the notification under Section 4(1) of the Act of 1894 vide RLA/169/2007/42 dated 06.08.2011 and thereupon after approval the declaration under Section 6 of the Act of 1894 was made vide RLA/169/2007/14 dated 14.11.2011. It was stated that the land valuation of the acquired land was fixed at Rs.2,70,000/- per Katha and accordingly, the land acquisition estimate amounting to Rs.11,02,49,371/- was approved by the Government vide communication bearing No.RLA.169/2007/62 dated 19.06.2012 and forwarded to the Commissioner, Guwahati Municipal Corporation being the requiring authority and the said had been deposited by the Guwahati Municipal Corporation as per the award statement dated 08.11.2012. It was also mentioned that the notice under Section 9 of the Act of 1894 was issued to various pattadars for receiving land compensation and out of which, 95% land compensation have already been released to the various pattadars. It is pertinent to mention that the aforesaid aspect do not touch upon the land in question but the relevance shown is based upon that the land measuring 52 Bighas 1 Katha 8 Lechas which was a part of the land in the original requisition order dated 22.10.1986 was acquired.

15. In respect to the land in question, it also mentioned that 7 Bighas 0 Kathas 14 Lechas was acquired vide LA No.3/86 (Part-A) for construction of Adabari Bus Stand (Park) as per the provisions of the Act of 1894. It was mentioned that the notification under Section 4 of the Act of 1894 dated 06.08.2011 was issued and the Government thereupon approved the declaration under Section 6(1) of the Act of 1894 on 02.01.2011. The land valuation of the acquired land was fixed at Rs.2,70,000/- per Katha and the land acquisition estimate was Rs.1,50,57,011/- which was approved by the Government on 19.06.2012 and forwarded to the Guwahati Municipal Corporation which was deposited by the Guwahati Municipal Corporation. Thereupon, the Government approved the award in LA Case No.3/86 (Part-A) on 28.08.2012. It was specifically mentioned that on account of the pendency of the writ petition, the payment of the land compensation had been kept on hold. At this stage, this Court finds it relevant to observe that there was no order passed by this Court to withhold the disbursement of the amount. In addition to that, there is also nothing on record to show that notices were issued to the beneficiary to collect the compensation.

16. In the backdrop of the above, let this Court take into consideration the contentions raised by the parties before this Court.

(A) Mr. P. K. Roy, the learned Senior counsel submitted that the act on the part of the Respondent Authorities to keep the land in question under requisition is completely arbitrary inasmuch as the requiring authority did not require the land in question. He submitted that it is completely inconceivable that a land can be kept under requisition for a period of 25 years, if one has to accept the stand taken by the Respondents that the land was not derequisitioned in the year 2005. The learned Senior counsel further expanding his submissions contended that the requisition unlike acquisition is temporary and transitory in nature and keeping the land under requisition for a period of 25 years is not only a colourable exercise of power but is also a fraud on the powers conferred by the statute. Referring to Section 35 of the Act of 1894, the learned Senior counsel submitted that the power conferred therein only permits temporary occupation for a period not exceeding three years. The learned Senior counsel further submitted that from a perusal of the order dated 25.10.1986 in LA Case No.3/86, it would be seen that there is no mention as to under what provisions, the requisition of the land was made. However, taking into account that the land in question was acquired under the Act of 1894 which the Respondents had duly admitted, the requisition has to be understood as to have been made under the Act of 1894. The learned Senior counsel in this regard referred to the judgment of the Supreme Court in the case of H.D. Vora Vs. State of Maharashtra and Others, reported in (1984) 2 SCC 337. The learned Senior counsel further submitted that on account of continuation of the illegal requisition, the Petitioners were deprived of the use of the land which had resulted in causing serious loss to the Petitioners. The learned Senior counsel submitted that the rights in respect to property may not be fundamental right but continues to be a constitutional right under Article 300A of the Constitution and the Supreme Court in the case of Vidya Devi Vs. State of Himachal Pradesh & Others, reported in (2020) 2 SCC 569 had observed that the right to property is akin to human right. The learned Senior counsel further submitted that the acquisition of the land by the Respondent Authorities in the year 2011 was in violation to the status quo order passed by this Court and as such the entire acquisition proceedings is nonest in law.

(B). Mr. H. Das, the learned counsel appearing on behalf of the petitioners in WP(C)No 1925 of 2009 submitted that the land in question belongs to the petitioners of the said writ petition and the private respondents had no right over the land in question. The Learned counsel submitted that the private respondents had no right over the land in question and any action taken by them as well as the respondent authorities which have led to the confirmment of certain rights or recognition of certain rights upon the private respondents are required to be interfered with.

(C). Mr. D. Nath, the learned Senior Government Advocate as well as Mr. R. Borpujari, the learned Standing counsel appearing on behalf of Revenue Department made similar submissions. The learned counsels submitted that the order dated 30.11.2005 was based upon a fake and fabricated document dated

29.03.2004 and as such the said order dated 30.11.2005 on the face of it was not tenable. Referring to the orders dated 01.11.2007 and 06.03.2010 passed by the Deputy Commissioner cum Collector whereby it was categorically held that the Additional Deputy Commissioner had no authority and jurisdiction to pass the order dated 30.11.2005, the learned counsels submitted that when an order is passed by an authority having no jurisdiction, the said order confers no rights upon the beneficiary as the said order is a nonest in law. Be that as it may, it was submitted that when the land in question have already been acquired under the Act of 1894 by following the due process, the question of challenging the requisition and other proceedings prior to acquisition have lost significance and as such the writ petitions filed prior to the acquisition proceedings have become infructuous. The learned counsels submitted that there being no specific order debarring the authority to acquire the land, the question of challenging the acquisition process does not arise. The learned counsels further submitted that the order passed in WP(C) No.2300/2010 is an order of status quo and the same has to be understood with reference to the order dated 06.03.2010 and nothing more.

17. From the above submissions so made and taking into account the materials on record, this Court broadly frames the following points for determination:

(A) Whether the continuance of requisition of the land in question by the Respondent Authorities for a period of 25 years as in the instant case was permissible?

(B) Whether the acquisition of the land in question requires interference in the facts of the instant case?

(C) To what relief(s), the parties are entitled to?

18. From the materials on record, it is seen that the Deputy Commissioner cum Collector, Kamrup (M) vide an order dated 22.10.1986 had requisitioned 59 Bighas 10 Lechas of land. From a perusal of the said order, it is not clear as to under what provisions, the said requisition was made. However, from the order dated 30.11.2005, it is seen that the Additional Deputy Commissioner, Kamrup (M) had exercised powers under the Act of 1964. Be that as it may, the Respondent Authorities themselves contended that the said order dated 30.11.2005 is a nonest as the Additional Deputy Commissioner, Kamrup (M) had no authority or jurisdiction. This Court however finds it very pertinent to observe that L.A. Case No.3/86 was processed under the Act of 1894 which would be evident from the order dated 02.02.2006 passed by the Deputy Commissioner cum Collector [Annexure-8 to WP(C) No.5689/2007] and there is no denial to the said document by the Respondents.

19. The requisition was made as would be seen from the said order dated 22.10.1986 itself at the request of the Commissioner, Guwahati Municipal Corporation dated 07.08.1986. The fact as is evident shows that an application was filed by one Smti. Charu Devi who was the wife of one of the legal heirs of

Late Priyanath Sarma seeking release of the requisitioned land of 9 Bighas 3 Kathas 0 Lechas contained in Dag No.146 of N.K. Patta No.14. The Commissioner, Guwahati Municipal Corporation had written a letter to the Deputy Commissioner, Kamrup (M) on 29.03.2004 that the said land can be freed from requisition from its end. This document is contested by the Respondents stating it to be a fabricated document as the signature is not of the then Commissioner, GMC and there are no official records available in respect to the said document. The above aspect would be seen from a perusal of the affidavit filed by the Respondent No.4 in WP(C) No.5689/2007 wherein it was stated that the said document dated 29.03.2004 by which the Commissioner, Guwahati Municipal Corporation has issued to the Deputy Commissioner, Kamrup (M) was a fabricated letter which was informed by the Commissioner, Guwahati Municipal Corporation vide a communication dated 10.07.2006.

20. Be that as it may, on the basis of the said communication dated 29.03.2004, an application was filed by the Petitioner Nos. 1 to 5 of the WP(C) No.5689/2007 along with one Smti Charu Devi seeking release of the land in question. The request for the reduced area of the land was taking into account the rights of the Petitioners and Smti Charu Devi was limited to the land in question i.e. 7 Bighas 0 Kathas 14 Lechas.

21. The Additional Deputy Commissioner, Kamrup (M) passed the order dated 30.11.2005 thereby derequisitioning 7 Bighas 0 Kathas 14 Lechas under Dag No.146 of N.K. Patta No.14 from the purview of the requisition which was made vide order dated 22.10.1986. The said order further mentions that due information be given to the Secretary, Revenue (LR) Department and the Commissioner, Guwahati Municipal Corporation and the Circle Officer, Guwahati Revenue Circle was directed to hand over the possession to the pattadars concerned.

22. Admittedly, permissions were issued in favour of the Petitioner Nos. 1 to 5 for selling lands on 18.05.2004 on the basis of a Government letter and thereupon, lands were sold to the Petitioner Nos. 6 to 31. The Petitioners in WP(C) No.1925/2009 though challenged those sale deeds in the said writ proceedings, but the said sale deeds in the opinion of this Court cannot be challenged in a writ proceedings inasmuch as whether the Petitioners in WP(C) No.1925/2009 had a better right than the Petitioners in the other writ petitions can only be decided in a forum wherein evidence can be adduced both oral and documentary evidence and such factual determination can be made.

23. Moving forward, let this Court now take up the first point of determination as to whether the Respondent Authorities could have kept the land in question under requisition for decades. The concept of requisition is something temporary and transitory in nature unlike acquisition which is permanent. It is very pertinent to observe that the distinction between requisition and acquisition of property is no longer res-integra. In the case of H.D. Vora (supra), the Supreme Court had the occasion to consider the validity of repeated continued requisition

of private premises initially acquired under the emergency powers during war years. The Supreme Court in the said case had pointed out the distinction between the two concepts i.e. requisition and acquisition observing that both the concepts are totally distinct and independent. Acquisition means acquiring of the entire title of the expropriated owner whatever the nature and the extent of the title may be. The entire bundle of rights which was vested in the original holder passes on acquisition to the acquirer leaving nothing to the former. It was categorically observed that the concept of acquisition has an air of permanence and finality in that, there is a transference of the title of the original holder to the acquiring authority. The Supreme Court observed that in contra-distinction, the concept of requisition involves merely taking of domain or control over property without acquiring rights of ownerships and must by its very nature be of temporary duration. In the said case, the Supreme Court summed up by pointing out that the State cannot under the guise of requisition continue dominion over someone's property for an indefinite period of time, because that would be a fraud on the power conferred on the Government. If the Government wants to take over the property for an indefinite period of time, the Government must acquire the property but the Government cannot use the power of requisition which is exercisable by the Government only for the purpose which is of transitory nature. It was further observed that if the public purpose for which the premises are required is of a perennial or permanent character from the very inception, no order can be passed requisitioning the premises and in such a case the order of requisition, if passed, would be a fraud upon the statute, for the Government would be requisitioning the premises when really speaking they want the premises for acquisition. The relevant portion of paragraph 6 of the said judgment is reproduced herein below:

"6.The concept of acquisition has an air of permanence and finality in that there is transference of the title of the original holder to the acquiring authority. But the concept of requisition involves merely taking of "domain or control over property without acquiring rights of ownership" and must by its very nature be of temporary duration. If requisitioning of property could legitimately continue for an indefinite period of time, the distinction between requisition and acquisition would tend to become blurred, because in that event for all practical purposes the right to possession and enjoyment of the property which constitutes a major constituent element of the right of ownership would be vested indefinitely without any limitation of time in the requisitioning authority and it would be possible for the authority to substantially take over the property without acquiring it and paying full market value as compensation under the Land Acquisition Act, 1894. We do not think that the Government can under the guise of requisition continued for an indefinite period of time, in substance acquire the property, because that would be a fraud on the power conferred on the Government. If the Government wants to take over the property for an indefinite period of time, the Government must acquire the property but it cannot use the power of requisition for achieving that object. The power of requisition is

exercisable by the Government only for a public purpose which is of a transitory character. If the public purpose for which the premises are required is of a perennial or permanent character from the very inception, no order can be passed requisitioning the premises and in such a case the order of requisition, if passed, would be a fraud upon the statute, for the Government would be requisitioning the premises when really speaking they want the premises for acquisition, the object of taking the premises being not transitory but permanent in character. Where the purpose for which the premises are required is of such a character that from the very inception it can never be served by requisitioning the premises but can be achieved only by acquiring the property which would be the case where the purpose is of a permanent character or likely to subsist for an indefinite period of time, the Government may acquire the premises but it certainly cannot requisition the premises and continue the requisitioning indefinitely.”

24. At this stage, this Court also finds it very relevant to take note of a judgment of the Constitution Bench in the case of Charanjit Lal Chowdhury Vs. Union of India and Others, reported in AIR 1951 SC 41 wherein the majority opinion rendered by His Lordship B. K. Mukherjee (as His Lordship then was) summed up the difference between the temporary and transitory nature of requisition and permanent nature of acquisition. It was opined that upon acquisition, the entire bundle of rights which were vested in the original holder would pass on acquisition to the acquirer leaving nothing in the former while requisition will endow merely possession in the person requisitioning while leaving the title of the owner intact.

25. In the case of Grahak Sanstha Manch and Others Vs. State of Maharashtra, reported in (1994) 4 SCC 192, the Constitution Bench of the Supreme Court approved the decision in the case of H.D. Vora (supra) insofar as requisition may be continued only for a reasonable period of time. However, the Constitution Bench did not approve that under the Bombay Land Requisition Act, 1948, requisition cannot be made for permanent purpose. It was observed that requisition might have to be resorted for a permanent public purpose to tide over the period of time required for making permanent premises available. Paragraph Nos. 8, 16 and 17 being relevant quoted herein below:

“8. Next, we turn to a judgment subsequent to that in H.D. Vora case. Sabyasachi Mukharji, J., who was one of the two learned Judges who heard H.D. Vora case, spoke for a Bench of three learned Judges. He said that there was no contradiction between the decision in the cases of Collector of Akola and H.D. Vora. In the Collector of Akola case no question was raised as to whether the order of requisition could continue for an indefinite duration. In H.D. Vora case no one contended that the purpose of housing homeless persons was not a temporary purpose but a permanent purpose and, therefore, the order of requisition was bad. The principal argument that was advanced was that though the order of requisition was good when made, it had ceased to be valid and

effective because it could not legitimately be continued for an indefinite length of time. The order of requisition had been allowed to continue for a period of almost 30 years and that is why it was said that the order of requisition had ceased to be valid and effective and the premises must therefore be derequisitioned. The Court said:

"It is no doubt true that some observations have been made in the judgment in that case with regard to the permanent or temporary character of the purpose for which an order of requisition could be made and to that extent what is said in that judgment may have to be slightly modified, but the principal decision in that case was that an order of requisition is by its very nature temporary in character and cannot be allowed to continue for an indefinite length of time, because then it would tantamount to an order of acquisition and would amount to a fraud on the exercise of the power of requisition, especially where there is no impediment in making the acquisition and no effort was made to acquire, must be regarded as a correct enunciation of the law which does not in any way conflict with what was laid down in the case of *Collector of Akola v. Ramchandra*."

The Court approved the observations of the Nagpur High Court in *Mangilal Karwa v. State of M.P.* which read thus:

"If the term 'requisition' has acquired any technical meaning during the two World Wars it has been used in the sense of taking possession of property for the purpose of the State or for such purposes as may be specified in the statute authorizing a public servant to take possession of private property for a specified purpose for a limited period in contradistinction to acquisition of property by which title to the property gets transferred from the individual to the State or to a public body for whose benefit the property is acquired. In 'requisition' the property dealt with is not acquired by the State but is taken out of the control of the owner for the time being for certain specified purposes. Even for this limited purpose, however, the owner becomes entitled to compensation, because 'requisition' of the property amounts at least to a temporary deprivation of the property."

The Court observed that, normally, the expression requisition meant the taking of possession of property for a limited period in contradistinction to acquisition. This popular meaning had to be kept in mind in judging whether in a particular case there had been in fact any abuse of power. Orders of requisition and acquisition had different consequences. The two concepts were different. In one title passed to the acquiring authority and in the other, while title remained with the owner, possession was taken over by the requisitioning authority.

16. We find ourselves in agreement with the view taken in the cases of *Collector of Akola* and *Jiwani Kumar Paraki* that the purpose of a requisition order may be permanent. But that is not to say that an order of requisitioning can be continued indefinitely or for a period of time longer than that which is, in the facts and circumstances of the particular case, reasonable. We note and approve in this

regard, as did this Court in Jiwani Kumar Paraki case, the observations of the Nagpur High Court in the case of Mangilal Karwa v. State of M.P. which have been reproduced above. That the concept of requisitioning is temporary is also indicated by the Law Commission in its Tenth Report and, as pointed out earlier, by the terms of the said Act itself, as it originally stood and as amended from time to time. There is no contradiction in concluding that while a requisition order can be issued for a permanent public purpose, it cannot be continued indefinitely. Requisitioning might have to be resorted to for a permanent public purpose, to give an example, to tide over the period of time required for making permanent premises available for it. The concepts of acquisition and requisition are altogether different as are the consequences that flow therefrom. A landlord cannot, in effect and substance, be deprived of his rights and title to property without being paid due compensation, and this is the effect of prolonged requisitioning. Requisitioning may be continued only for a reasonable period; what that period should be would depend upon the facts and circumstances of each case and it would ordinarily, be for the Government to decide.

17. For the aforesaid reasons, we hold that the decision in H.D. Vora case does not require reconsideration. We, however, do not approve the observations therein that requisition orders under the said Act cannot be made for a permanent purpose. We make it clear that the said decision does not lay down, as has been argued, a period of 30 years as the outer limit for which a requisition order may continue. The period of 30 years was mentioned in the decision only in the context of the date of the requisition order there concerned. An order of requisition can continue for a reasonable period of time and it was held, as we hold, that the continuance of an order of requisition for as long as 30 years was unreasonable.”

26. The issue again came up before the Supreme Court in the case of Rajendra Kumar Gupta and Another Vs. State of U.P. and Others, reported in (1997) 4 SCC 511 wherein the Supreme Court was dealing with the requisitioning of immovable property under the Defence and Internal Security of India Act, 1971 and distinguished the judgment of the Constitution Bench in the case of Grahak Sanstha Manch (supra) and observed that the judgment of the Constitution Bench was rendered in Bombay Land Requisition Act, 1948 which dealt with requisitioning of premises for a public purpose. Paragraph 11 of the said judgment provides further insight as to when the requisition should be resorted to when the said land could have been acquired for the purpose of construction of permanent nature. Paragraph No.11 of the said judgment is quoted herein below:

“11. It is no doubt true as laid down by a Constitution Bench of this Court in the case of Grahak Sanstha Manch v. State of Maharashtra that the requisition of premises under the Bombay Land Requisition Act, 1948 could be made even for a permanent public purpose. However the said decision was rendered in the light of the express provisions of the Bombay Land Requisition Act, 1948 which dealt

with requisitioning of a premises for a public purpose while in the present case the requisition of premises is contemplated to be resorted to during the internal and external emergency which resulted in the enactment of the Act. Therefore, by the very nature of the parent Act under which this power is being exercised situations must be of such grave and urgent nature that they would compel exercise of such emergent powers. Consequently it could not be said that power to requisition under Section 23(1) of the Act for maintaining supplies and services essential to the life of the community could be resorted to for catering to any permanent public purpose contemplated by the said provision. Sub-section (3) of Section 23 also is a pointer in the same direction. It has clearly enjoined that period of such requisition shall not extend beyond the period for which such property is required for any of the purposes mentioned in sub-section (1). Consequently it must be held that orders under Section 23(1) of the Act could be passed only for emergent purposes contemplated by the provision and they are by their very nature expected to be of limited duration. A perpetual emergency is not contemplated by the Act or the Presidential notification under which it got its birth. Section 30 of the Act is also relevant in this connection. It clearly lays down that even during emergency when such temporary requisition orders are passed if the requisitioning authority is shown to have spent large amounts on the requisitioned property under circumstances mentioned in the said section the said property may be acquired by the Government. It must, therefore, be held that in the scheme of Section 23 of the Act the orders of requisition of immovable properties must necessarily be not of a permanent nature but must be of limited duration commensurate with the continuance of the emergent situations and the needs which require such orders to be passed and continued for the requisite period of such emergent need for which such orders are passed. As the impugned order of requisition is as old as of 1976 and the respondents have persisted with the said order for all these years spread, by now, over more than two decades it has to be held that such indefinite requisition of premises is contrary to the very scheme of Section 23 and even on that ground the order would fall foul on the touchstone of Section 23 itself. Before parting with this discussion we may refer to a decision of a Division Bench of the Patna High Court in the case of *Speedcrafts (P) Ltd. v. Distt. Magistrate*. Interpreting these very provisions of the Act it was held by the Division Bench in the said case that if the public purpose for which a property is acquired is not of a temporary character resort cannot be had to the provision of Section 23. In the context and the settings of the relevant provisions of the Act the aforesaid view of the Patna High Court is well sustained. We have perused the departmental file and find that the Collector had agreed with the opinion that the property could be acquired for the purpose of constructing the showroom and not requisitioned, as the purpose is "outside the ambit of Section 23". Why then did the department still proceed to "requisition" and not take recourse to "acquisition" proceedings is not intelligible. The first point is answered in the negative by holding that the impugned order of requisition was not validly made under Section 23 of the Act."

27. The trend of the subsequent judgments by the Supreme Court are on similar lines and this aspect could be seen from the judgment in the case of Kolkata Metropolitan Development Authority Vs. Pradip Kumar Ghosh, reported in (2018) 13 SCC 623 which shows that the Supreme Court had been reiterating that the period for requisitioning an immovable property is finite and the actions of the Union of India or the State Government to continue to possess a property on the basis of requisitioning indefinitely had to be frowned upon. This Court further finds it appropriate at this stage to take note of the judgment of the Supreme Court in the case of B.K. Ravichandra and Others Vs. Union of India and Others, reported in (2021) 14 SCC 703 wherein the Supreme Court again reiterated the same principles as above noted. The Supreme Court in the said judgment observed that permitting the State to continue with the requisition of the immovable property indefinitely would amount to condoning lawlessness. Paragraph No.24 and 35 of the said judgment are reproduced herein below:

"24. The legal effect of requisitioning immovable property, it goes without saying, is that temporarily i.e. for the period the requisition order is in operation, the owner loses her possessory rights, even though the title remains undisturbed. Since the deprivation of possession is through authority of law, in keeping with fair procedure, the law (in this case, the Requisitioning Act) provides for payment of compensation in accordance with predetermined principles. Yet, the taking of property by definition is finite : it cannot result in expropriation or deprivation of title altogether, unless another process for acquiring it, is initiated.

35. It is, therefore, no longer open to the State : in any of its forms (executive, State agencies, or legislature) to claim that the law — or the Constitution can be ignored, or complied at its convenience. The decisions of this Court, and the history of the right to property show that though its pre-eminence as a fundamental right has been undermined, nevertheless, the essence of the rule of law protects it. The evolving jurisprudence of this Court also underlines that it is a valuable right ensuring guaranteed freedoms and economic liberty. The phrasing of Article 300-A is determinative and its resemblance with Articles 21 and 265 cannot be overlooked, they in effect, are a guarantee of the supremacy of the rule of law, no less. To permit the State : whether the Union or any State Government to assert that it has an indefinite or overriding right to continue occupying one's property (bereft of lawful sanction) — whatever be the pretext, is no less than condoning lawlessness. The courts' role is to act as the guarantor and jealous protector of the people's liberties : be they assured through the freedoms, and the right to equality and religion or cultural rights under Part III, or the right against deprivation, in any form, through any process other than law. Any condonation by the court is a validation of such unlawful executive behaviour which it then can justify its conduct on the anvil of some loftier purpose, at any future time, aptly described as a "loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need."

28. Now coming back to the facts involved in the instant case, it would

admittedly be seen that on the basis of an order dated 07.08.1986 issued by the Commissioner, Guwahati Municipal Corporation, lands measuring 59 Bighas 0 Kathas 10 Lechas was requisitioned by the Deputy Commissioner cum Collector vide an order dated 22.10.1986 which included the lands of the Petitioners for setting up of a Bus Terminus. The said Bus terminus was constructed and completed in the year 1988. The construction of the bus terminus was permanent in nature and by 1988 it was undoubtedly clear that the bus terminus would be a permanent feature. Taking into account the Judgment of the Supreme court in *Grahak Sanstha Manch (supra)*, the Respondent authorities could have gone ahead with the process of requisition for immediate necessity of taking possession of the land till acquisition proceedings could have been taken up as such process of acquisition are time consuming to certain extent. But the materials on record do not show any rationale or reasons why the land in question was kept for decades under requisition. As already stated the Respondent Authorities in the instant proceedings continued to keep the land in question under requisition and it was only in the year 2011, steps were taken for acquisition. In this process more than 25 years had elapsed. It is the opinion of this Court that sans any material produced before this Court justifying why the land was required to be kept under requisition for such a long period, the continuance of the requisition was nothing but a fraud on the powers conferred upon the Respondent Authorities as well as a colourable exercise of powers. In addition to that, such actions on the part of the Respondent Authorities would amount to violation of Article 300A and a case of lawlessness as observed by the Supreme Court in *B.K. Ravichandra (supra)*. It is the opinion of this Court that even without considering the legality or validity of the communication dated 29.03.2004 or even the order dated 30.11.2005, the act on the part of the Respondent Authorities to continue with the requisition for a period of 25 years was unwarranted and a colourable exercise of power. This therefore answers the first point for determination. The question about what relief the Petitioners are entitled to shall be discussed while deciding the third point for determination.

29. Before proceeding further, let this Court consider the rights which had accrued upon Petitioner Nos. 6 to 31 in WP(C) No.5689/2007 pursuant to the execution of the deeds of sale. This Court finds it very apposite herein to observe that the Constitution Bench of the Supreme Court in the case of *Charanjit Lal Chowdhury (supra)* had categorically observed that during the period of requisition, it is only the possession which is being taken over leaving the title of the owner intact and under such circumstances, there was no bar on the part of the Petitioner Nos. 1 to 5 provided they had the title to transfer the rights in favour of the Petitioner Nos. 6 to 31.

30. Let this Court now consider the second point for determination as regards the validity of the acquisition proceedings. At this stage, one needs to take note of that by virtue of the provisions of Section 16 of the Act of 1894 pursuant to the award being passed and the possession being taken, the land vests upon the State. This Court has also taken note of that there is no challenge in the present

proceedings against the said acquisition insofar as violation to Section 4 or Section 6 or Section 11 of the Act of 1894. The ground taken to challenge the acquisition proceedings is that the acquisition so carried out in respect to the land in question was in violation to the order of status quo passed by this Court in WP(C) No.2300/2010.

31. This Court had duly taken note of that in WP(C) No.2300/2010, though there was a status quo order as regards the land was passed on 09.04.2010 which was further extended vide an order dated 05.05.2010 till the next date but there was no date fixed and the matter was not listed for years. With due respect, this Court finds it apposite to observe that extending a status quo order till the next date without fixing the date renders the interim order ineffective, inefficacious and unproductive. Be that as it may, it is also relevant to observe that the status quo order so passed was in connection with the challenge made to the order dated 06.03.2010. The said status quo order did not preclude the Respondent Authorities to acquire the land, if the statute permitted to do so. Under such circumstances, the question of interference with the acquisition proceedings on the ground of the existence of the status quo order in the opinion of this Court would not be proper sans any violation to Section 4, Section 6 or Section 11 of the Act of 1894 being made out by the Petitioners. The above therefore decides the second point for determination.

32. This Court further finds it very pertinent to take note of the affidavit so filed in WP(C) No.1925/2009 by the Respondent Authorities, reference to which this Court had made in detail hereinabove. In the said affidavit, it was mentioned that the awarded amount in respect to the land in question have not been paid on account of the pendency of the writ proceedings. The same in the opinion of this Court is completely a misconceived stand taken inasmuch as there was no bar on the part of the Respondent Authorities to make the payment as there is no order passed prohibiting the payment of the compensation. It is also relevant to mention that neither the amount of compensation was tendered to the Petitioners nor the said amount was deposited in the Court. The Respondent Authorities continued to hold on to the amount without any valid reasons. Under such circumstances, this Court finds it relevant to take note of the Constitution Bench Judgment of the Supreme Court in the case of Indore Development Authority Vs. Manoharlal and Others, reported in (2020) 8 SCC 129 wherein the Supreme Court observed that if the amount have not been paid, the beneficiary would be entitled to the enhanced interest in terms with Section 34 of the Act of 1894. For the sake of clarity, this Court finds it relevant to mention that Section 34 of the Act of 1894 stipulates that after passing of the award and taking over the possession, the awarded amount would carry interest @9% for the first year and thereafter interest @15% after completion of the first year. In the instant case, it is an admitted fact that the Respondents were in possession and as such the interest in terms with Section 34 of the Act of 1894 would accrue from the date of passing of the award i.e. 28.02.2012.

33. Accordingly, on the basis of the above analysis and determination, the third point of determination is decided in the following manner. All the five writ petitions are disposed of with the following observations and directions:

(i) This Court holds that the continuance of the requisition of the land in question for a period of almost 25 years i.e. from 22.10.1986 to 05.08.2011 was unreasonable and arbitrary. The said requisition so continued for more than two decades is nothing but a fraud on the powers conferred upon the Respondent Authorities and also amounts to colourable exercise of power. The continuance of the Requisition of the land in question also violates the mandate of Article 300 A of the Constitution of India. However, taking into account that during the pendency of the writ proceedings, the land in question had already been acquired thereby the requisition had come to an end, no directions can be issued against the said illegal continuance of the requisition. Be that as it may, this Court grants liberty to the Petitioners to file an application before the District Commissioner, Kamrup (M), if aggrieved by the inadequacy of the requisition compensation. This liberty has to be exercised within 6 (six) weeks from the date of the instant judgment. The District Commissioner, Kamrup (Metro) shall be at liberty to either accept the claim so made or make a Reference to the Court of the Learned District Judge, Kamrup (Metro) within a period of six weeks from the date of submission of the application (if any).

(ii) This Court finds no reason to interfere with the acquisition so carried out in respect to the land in question i.e. the plot of land measuring 7 Bighas 0 Kathas 14 Lechas covered by Dag No.146 included in N.K. Patta No.14 of village Gorpandu, Kumarpara, Mouza Jalukbari for the reason already above mentioned. Be that as it may, this Court makes it very clear that the persons interested in respect to the said land would be entitled to the compensation. The withholding of the said compensation on the ground of pendency of the instant proceedings that too when there was no stay was completely uncalled for. As neither the concerned Respondent Authorities have tendered the amount to the person interested in respect to the said land in question nor have deposited the same in the Court, the said amount shall carry interest in terms with Section 34 of the Act of 1894 till the said amount have been duly tendered to the person interested.

(iii). Taking into account that during the pendency of the instant writ proceedings, the acquisition proceedings were initiated and culminated, the person interested i.e. the Petitioners herein are given the liberty to file an application under Section 18 of the Act of 1894 before the District Commissioner, Kamrup (M), if aggrieved by the inadequacy compensation and the said application has to be filed within 6 (six) weeks from the date of the instant judgment. The District Commissioner, Kamrup (Metro) shall be at liberty to either accept the claim so made or make a Reference to the Court of the Learned District Judge, Kamrup (Metro) within a period of six weeks from the date of submission of the application (if any).

(iv) In view of the above findings in respect to the continuation of the requisition for almost 25 years and holding it to be unreasonable, arbitrary and a colourable exercise of power, this Court is not inclined to go into the legality and validity of the orders dated 30.11.2015, 01.11.2007 and 06.03.2010 as the same loses significance.

(v) The claim of the Petitioners in WP(C) No.1925/2009 is a claim primarily between the Petitioners of the said writ petition and the private Respondents as to who would be entitled to the requisition amount and whether the private Respondents in the said writ proceedings had the authority to transfer the lands to the Petitioner Nos. 6 to 31 in WP(C) No.5689/2007. These disputes being the disputes which are civil in nature, the same cannot be adjudicated in the instant writ proceedings. Be that as it may, the Petitioners in WP(C) No.1925/2009 are given the liberty to file an application before the District Commissioner, Kamrup (M) seeking a reference as regards the entitlement to the compensation both requisition and acquisition compensation. The said Petitioners would also be at liberty to additionally seek reference on the inadequacy of the compensation in respect to the requisition compensation as well as acquisition compensation. The liberty to file the Application has to be exercised within 6 (six) weeks from the date of the instant judgment. This Court further directs the District Commissioner, Kamrup (M) to the effect that in the circumstance the Petitioners in the instant proceedings file applications seeking reference on the basis of the liberty so granted herein within the time stipulated i.e. 6 (six) weeks from the date of the instant judgment, the District Commissioner, Kamrup (M) shall forthwith and not later than 6 (six) weeks therefrom make a reference to the Court of the District Judge, Kamrup (M) at Guwahati.

(vi) All the interim orders which have been passed in the writ proceedings cease to exist with the passing of the instant judgment.