
(2011) 09 CAL CK 0006
In the Calcutta High Court
Case No : M.A.T. No. 227 of 2011

Bharat Sanchar Nigam Limited

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 20-09-2011

Acts Referred:

Constitution of India, 1950 — Article 141, 226, 227
Land Acquisition Act, 1894 — Section 18, 2, 3(aa), 3(b), 4
Limitation Act, 1963 — Section 18, 5

Citation : (2012) 5 CHN 680

Hon'ble Judges : Pratap Kumar Ray, J; Abdul Ghani, J

Bench : Division Bench

Advocate : P.K. Das, Dipak Das and S. Ray, for the Appellant; Samiran Giri for the Respondent No. 1, S.S. Roy, Uma Prasad Mukherjee and Janardan Mondal for the Respondent Nos. 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

Pratap Kumar Ray, J.—Assailing the judgement and order dated 11th June. 2010 passed in W.P. No. 7104 (W) of 2010, this appeal has been preferred. The impugned judgement read such. By a letter dated 9th July, 1973, the General Manager of Calcutta Telephones requested the 1st Land Acquisition Collector to initiate land acquisition proceedings for acquisition of land measuring about 3.5 acres, being Premises No. 154 and 154/1 Netaji Subhas Chandra Road (Regent Park), Calcutta for construction of a Telephone Exchange as well as quarters for employees of the Posts and Telegraphs Department.

2. Pursuant to the aforesaid request, the Land Acquisition Collector initiated land acquisition proceedings being L.A. Case No. I-D-2/1986-87. On 10th July, 1974 notification u/s 4 of the Land Acquisition Act, 1894 was published. Thereafter, declaration u/s 6 of the Land Acquisition Act was published by issuance of notification No. 13828-LA (2) dated 11.9.1976. The said notification was published in the Calcutta Gazette extraordinary on 13th August, 1976.

3. By a communication dated 14th April, 1986, the office of the 1st Land Acquisition Collector called upon the Divisional Engineer, Calcutta Telephones to place a sum of Rs. 76,75,407/- towards the estimated cost of acquisition.

4. According to the petitioner, on or about 10th June, 1986 the aforesaid sum was placed with the 1st Land Acquisition Collector towards the cost of acquisition of the land in question. On or about 29th October, 1986 possession of the plots was taken. On or about 26th September, 1986 the 1st Land Acquisition Collector made an award of compensation of Rs. 69,68,764.34.

5. The respondent Nos. 2 and 3, being the owners of the land in question made a reference u/s 18 of the Land Acquisition Act. 1894. On 4th December, 2000, the 4th Additional Special Land Acquisition Judge, Alipore passed a judgment and decree enhancing the compensation.

6. Against the judgment and decree of the learned 4th Additional Special Land Acquisition Judge, the State of West Bengal preferred an appeal in this Court, which was registered as FAT No. 3536 of 2003.

7. This Court directed the 4th Additional Special Land Acquisition Judge to deposit 50% of the decretal amount, in default whereof, the appeal would be dismissed.

8. Thereafter the 4th Additional Special Land Acquisition Judge requested the petitioner, being the successor-in-interest of the Calcutta Telephones to deposit the requisite amount for compliance of the direction of this Court.

9. On 31st May, 2004, the appeal was dismissed since 50% of the decretal amount was not deposited. Significantly, the petitioners had been impleaded as respondents in the appeal.

10. The respondent Nos. 3 and 4 initiated execution proceedings being L.A. Execution Case No. 34 of 2005 for execution of the judgment and decree of the 4th Additional Special Land Acquisition Judge, Alipore. The petitioners herein made an application, pursuant to which the petitioners were added as respondents in the said execution case. The order whereby the petitioners were added as parties in the execution case was, however, set aside by this Court in an application under Article 227 of the Constitution of India being C.O. No. 1919 of 2008.

11. This Court, however, observed that the order of this Court, whereby this Court set aside the order of the 4th Additional Special Land Acquisition Judge, adding the petitioners as respondents in the land acquisition case would not preclude the requiring body from challenging the award passed by the 4th Additional Special Land Acquisition Judge.

12. Mr. P.K. Das appearing on behalf of the petitioners submitted that the 4th Additional Special Land Acquisition Judge passed his judgment and decree enhancing the compensation amount, without notice to the requiring body, being

the petitioners.

13. In support of his arguments, U.P Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc., where the majority judges held that section 50(2) of the Land Acquisition Act conferred on the local authority for whom the land was being conferred, a right to appear in the acquisition proceedings before the Collector and the reference Court and adduce evidence for the purpose of determining the amount of compensation.

14. The Supreme Court held as follows:

Sub-section (2) of section 50 enables a local authority to appear in any acquisition proceeding at the stage of determination of compensation before the Collector or the reference Court and adduce evidence for the purpose of determining the amount of compensation. The object underlying the aforesaid provision appears to be to safeguard the interests of the local authority which would be required to pay the amount of compensation that would be determined by the Collector or by the reference Court by enabling it to adduce evidence having a bearing on the amount of compensation before the Collector or the Court and thereby assist them in making a fair determination. Such protection was necessary because in the matter of acquisition under the Land Acquisition Act a local authority for whom the land is acquired does not stand on the same footing as the Government. While making the award the Collector acts as an agent of the Government and functions under its administrative control.....we are of the opinion that sub-section (2) of section 50 must be construed as conferring a right on the local authority for whom the land is being acquired to participate in the acquisition proceedings at the stage of determination of the amount of compensation before the Collector as well as the reference Court.

The said right can be effectively exercised by the local authority only if it has information of the proceedings which are pending before the Collector as well as the reference Court. In other words the right conferred u/s 50(2) of the L.A. Act carries with it the right to be given adequate notice by the Collector as well as the reference Court before whom the acquisition proceedings are pending of the date on which the matter of determination of the amount of compensation will be taken up. Service of such a notice, being necessary for effectuating the right conferred on the local authority u/s 50(2) of the L.A. Act, can, therefore, be regarded as an integral part of the said right and the failure to give such a notice would result in denial of the said right unless it can be shown that the local authority had knowledge about the pendency of the acquisition proceedings before the Collector or the reference Court and has not suffered any prejudice on account of failure to give such notice.....

Thus, on an interpretation of the provisions of section 50(2) of the L.A. Act, it must be concluded that, subject to the limitation contained in the proviso, a local authority for whom land is being acquired has a right to participate in the

proceedings for acquisition before the Collector as well as the reference Court and adduce evidence for the purpose of determining the amount of compensation and the said right imposes an obligation on the Collector as well as the reference Court to give a notice to the local authority with regard to the pendency of those proceedings and the date on which the matter of determination of amount of compensation would be taken up. The recognition of this right raises the question whether the local authority, feeling aggrieved by the determination of the amount of compensation by the Collector or the reference Court, can take recourse to any legal remedy, Before dealing with this question we would take note of the decisions of this Court having a bearing on the issue.

15. Mr. Das next cited M/s. Neyveli Lignite Corpn. Ltd. Vs. Special Tahsildar (Land Acquisition), Neyveli and others, where the Supreme Court held that the beneficiary, that is, the local authority or company for whom land had been acquired, was a person interested in determination of just and proper compensation. If the compensation was enhanced, the beneficiary would be entitled to seek leave of the Court and file appeal against the enhanced award and decree of the Civil Court or to file a writ petition under Article 226 assailing the legality or correctness of the enhancement. Mr. Das next cited Agra Development Authority Vs. Special Land Acquisition Officer and Others, where the Supreme Court held as follows:

It is next urged that the appellants were not given any opportunity to adduce evidence in the proceedings before the Collector for fixation of the cost of acquisition. It was fairly admitted that the appellants were aware of the proceedings. However, no notice had been issued to them and they had not been given any opportunity to adduce evidence for purposes of determining the amount of compensation. To this submission no adequate answer could be given by the respondents. All that was submitted was that the appellants were aware of the proceedings and had held meetings with the Government and the Collector. In our view, this is not sufficient. What is required by section 50 of the Land Acquisition Act, is that the body for whom the property is being acquired is given an opportunity to appear and adduce evidence for the purposes of determining the amount of compensation. Nothing could be shown to us that this had been done. On this point the matter requires to be sent back to the Special Land Acquisition Officer for refixing compensation payable.

16. Mr. Das next cited Abdul Rasak and Others Vs. Kerala Water Authority and Others, where the Supreme Court following its earlier judgment and order in U.P. Awas Evam Vikas Parishad vs. Gyan Devi (supra) held that the body for whose benefit the land had been acquired was also entitled to appear and adduce evidence for the purpose of determining compensation.

17. The Supreme Court upheld the order of the High Court remanding the case to the reference Court for fresh adjudication after affording the requiring party opportunity of participation.

18. Mr. Das relied upon Smt. Kanak and Another Vs. U.P. Avas Evam Vikas Parishad and Others, where Supreme Court held that the High Col. had not committed any illegality in allowing a writ petition challenging an award of the Reference Court. The Supreme Court, however, held that the case should be remitted to the Reference Court.

19. Mr. Das next cited a Division Bench judgment of this Court in Calcutta Metropolitan Development Authority Vs. State of West Bengal and Others, . The Division Bench held that where lands were acquired by the State Government for the benefit of the CMDA and admittedly no notice was served on CMDA, the requiring body, the award on reference was liable to be set aside.

20. Mr. Das next cited The West Bengal Housing Board and Another Vs. The State of West Bengal and Others, where a learned Single Bench of this Court held that an award made by the reference Court in an application u/s 18 could be challenged by filing a writ application under Article 226 of the Constitution of India.

21. Mr. Tapas Roy, Senior Advocate, appearing on behalf of the respondent Nos. 2 and 3 argued that the writ petition was hopelessly barred by delay. Mr. Roy submitted that acquisition proceedings had been initiated way back in 1973. Mr. Roy argued that State of West Bengal had preferred the appeal being FAT No. 3536 of 2003 in this Court on 12th December, 2003. Before filing the appeal, a Memo No. 1542(2)/I(2)-LA dated 10th September, 2003 was issued requesting the General Manager (i.e.) Calcutta Telephones to file a separate appeal against the judgment and decree of the land acquisition judge.

22. Mr. Roy argued that the petitioner has impugned the judgment and decree on the ground that the same was passed without notice to the petitioner being the requiring authority.

23. Mr. Roy argued and rightly that the petitioner was well-aware of the judgment and decree dated 4th December, 2000. In any ease, by letter dated 24th July, 2000 the State Government informed the petitioner of the decree and asked the petitioner to make payment of the decretal dues to the Collector.

24. Mr. Roy further pointed out that as early as on 10th December, 2003, the State Government requested the petitioner to get itself added as party to the appeal filed by the State, against the judgment and decree of the reference Court and to contest the same.

25. Mr. Roy submitted that from the facts disclosed in the affidavit-in-opposition, it was clear that the petitioner all along had notice of the proceedings including the reference proceedings and the judgment and decree.

26. Mr. Roy argued that even if no formal notice of the reference had been issued, the writ petitioners had notice of the proceedings before the reference Court as well as the appeal in this Court.

27. Mr. Roy argued that in U.P. Awas Evam Vikas Parishad (supra) the Supreme Court held that failure to give notice would result in denial of right of hearing, unless it could be shown that the local authority had knowledge of the pendency of the acquisition proceedings before the Collector or the reference Court.

28. It is a matter of record that the petitioner was put to notice of the judgment and decree of the reference Court by the Memo dated 20th September, 2003. The petitioner was also aware of the appeal in this Court.

29. The petitioner, however, did not challenge the judgment and decree by preferring an independent appeal. Nor did the petitioner get itself added as party to the appeal. The petitioner did not deposit the requisite amount as a result of which the appeal stood dismissed. There can be no doubt that the requiring body is entitled to opportunity of hearing on the issue of enhancement of compensation. The land acquisition Court or the reference Court could not have shut out the requiring body. The question is whether the judgment and decree is rendered invalid and/or ineffective by reason of non-service of notice on the petitioner.

30. As held in U.P. Awas Evam Vikas Parishad (supra) the object of notice was to inform the requiring body of the proceedings to enable the requiring body to participate in the same.

31. Failure to give notice to the requiring body would result in denial of the right of the local authority of participation unless it can be shown that the local authority had knowledge about the pendency of the acquisition proceedings.

32. In this case, as observed above, the requiring body had notice of the proceedings, at least on 10th September, 2002. If the petitioner chose not to exercise its right to intervene and participate, the petitioner waived its right to do so.

33. There can be no doubt that the requiring authority has a right to participate in the compensation proceedings, the reference proceedings as also any appeal therefrom. However, mere omission to issue notice would not render a judgment and decree of a reference Court invalid where the requiring body had knowledge of the proceedings. Delay alone may not be a ground for denying relief where a very good case for relief is made out. However, in the facts and circumstances of the instant case, where the petitioner chose not to assert its right to participate for so many years, the writ petition is liable to be rejected on the ground of delay.

34. For the reasons discussed above, the writ petition is dismissed.

35. Prayer for stay of operation of the operative part of this judgment and order is considered and refused.

Urgent certified photostat copy of this judgment/order, if applied for, be supplied to the parties subject to compliance of all requisite formalities.

36. It appears from the impugned judgement under appeal that on the ground of

delay writ application was dismissed and not on the merit of the case. In concluding portion of the judgement learned Trial Judge has observed that mere lapse to issue notice to the requiring body by reference Court will not render the judgement and decree of reference Court invalid where the requiring body had knowledge of the proceeding and further held that delay alone would not be embargo to deny relief where a good case for relief is made out. So far as findings of the learned Trial Judge is concerned about invalidity of the judgement and decree of the reference Court for non-service of notice by the reference Court in a proceeding arose out of section 18 of the Land Acquisition Act, the issue is not res Integra in view of judgement passed by the Apex Court in the case *Agra Development Authority Vs. Special Land Acquisition Officer and Others*, and *Abdul Rasak and Others Vs. Kerala Water Authority and Others*, wherein the Apex Court held that in spite of fact of knowledge of the proceeding u/s 18 of the said Act, notice of a proceeding u/s 18 is required to be served upon the requiring body and without notice requiring body would not be in a position to adduce evidence to the reference Court on (sic) of enhancement of compensation amount. The relevant paragraphs of the said two judgements read such:-

Agra Development Authority Vs. Special Land Acquisition Officer and Others,

6. It is next urged that the appellants were not given any opportunity to adduce evidence in the proceedings before the Collector for fixation of the cost of acquisition. It was fairly admitted that the appellants were aware of the proceedings. However, no notice had been issued to them and they had not been given any opportunity to adduce evidence for purposes of determining the amount of compensation.

7. To this submission adequate answer could be given by the respondents. All that was submitted was that the appellants were aware of the proceedings and had held meetings with the Government and Collector. In our view, this is not sufficient. What is required by section 50 of the Land Acquisition Act is that the body for whom the property is being acquired is given an opportunity to appear and adduce evidence for the purposes of determining the amount of compensation. Nothing could be shown to us that this had been done. On this point the matter requires to be sent back to the Special Land Acquisition Officer for refixing compensation payable.

8. Thus the appeal is allowed. We remit the matter back to the Special Land Acquisition Officer for refixing the compensation payable after giving a notice to the appellant to appear and adduce evidence before him. As the matter is being remitted back, we clarify that if any other party is desirous of adducing further evidence, they will also be entitled to do so. After considering the material, which is placed before him, the Special Land Acquisition Officer shall fix the compensation and re-declare or amend his award appropriately within a period of six months from today.

Abdul Rasak and Others Vs. Kerala Water Authority and Others,

8. Learned counsel for the claimant-appellants also submitted that Superintending Engineer of KWA had appeared as a witness in the proceedings before the Civil Court and, therefore, it can be inferred that the authority was aware of the proceedings and if it did not promptly take steps for impleadment, it should not have been heard to complain before the High Court that it did not have notice of the proceedings and that was denied participation in the proceedings before the Civil Court. It has been held by this Court in *Agra Development Authority Vs. Special Land Acquisition Officer and Others*, that where land was acquired at the cost of local development authority, a notice to it was mandatory and simply because the local authority was aware of the proceedings and had participated in the meetings where matters as to compensation were discussed, was not a sufficient compliance with section 50 of the Land Acquisition Act.

9. In our opinion, the High Court has not erred in taking the view which it has taken and directing the reference cases to be remitted to the Civil Court consistently with the law laid down by the Constitution Bench. As KWA shall have to be impleaded as party to the proceedings before the Civil Court from very beginning, a retrial becomes unavoidable.

37. Very recently Apex Court further has gone a step forward identifying the legal right of the requiring body to oppose the proceeding of reference Court u/s 18 of the said Act, by holding inter alia, that if any notice is not served to the requiring body, the judgement and decree, would be nullity. In the case *Delhi Development Authority Vs. Bhola Nath Sharma (Dead) by L.Rs. and Others*, wherein on considering earlier five judges bench judgement regarding interpretation of section 50 of the Land Acquisition Act, the Court held that non-service of notice to the requiring body by the reference Court goes to the root of the matter denying opportunity to oppose enhancement of compensation prayer when liability to pay that amount lies to said body and thereby held that the judgement and decree would be treated as nullity. The relevant paragraph of the said judgement read such:-

42. In view of the above discussion, we hold that: (i) DDA falls within the definition of the expressions "local authority" [section 3(aa)] and "person interested" [section 3(b)] of the Act;

(ii) DDA was entitled to participate in the proceedings held before the Land Acquisition Collector;

(iii) The failure of the Land Acquisition Collector to issue notice to DDA and give an opportunity to it to adduce evidence for the purpose of determining the amount of compensation payable to the landowners was fatal to the award passed by him.

(iv) DDA was entitled to notice and opportunity to adduce evidence before the

Reference Court could enhance market value of the acquired land entitling the respondents to claim higher compensation and, as no notice or opportunity was given to DDA by the Reference Court, the judgments rendered by it are liable to be treated as nullity;

(v).....

43. In the result, the appeals are allowed. The impugned judgement of the Division Bench of the High Court as also the judgements of the Reference Court are set aside and the matters are remitted to the Reference Court for deciding the two references afresh after giving opportunity of hearing to the parties, which shall necessarily include opportunity to adduce evidence for the purpose of determining the amount of compensation. The Reference Court shall decide the matter without being influenced by the observations contained in the judgement of the High Court and this judgement.

38. It is true that u/s 50 sub-section 2 of Land Acquisition Act, there is no statutory provision for giving opportunity of hearing to requiring body explicitly to oppose the proceeding u/s 18 of the said Act. But in view of series of judgements of Apex Court as discussed and considered in the latest case of Delhi Development Authority (supra), now it is the law of the land under Article 141 of the Constitution of India that reference Court in a proceeding u/s 18 of the Land Acquisition Act must serve a notice to the requiring body who is liable to make payment of compensation amount and to provide him an opportunity to defend the said proceeding. The conceptual idea and jurisprudential concept of such declaration by the Apex Court, which is law of the land, is based on sound reasoning that a person who has to bear the financial responsibility should be heard in a proceeding u/s 18 of Land Acquisition Act. Though statute has not identified such right, but in view of said judgements of the Apex Court which is judgement in rem on application of Article 141 of the Constitution of India opportunity for hearing and to defend a proceeding u/s 18 of the said Act, impliedly to be read in section 50(2) of the said Act, which is mandatory.

39. Mr. Tapas Roy, learned senior Advocate, for the respondent whose land has been acquired, however, intended to argue that the judgement of Delhi Development authority (supra, is a judgement per incuriam and the declaration of the Apex Court in the said case that the judgement and decree would be liable to be treated as nullity was a finding without any foundation and reasoning by considering the cases and legal parameters when a decree is stamped as nullity, and as such it has no binding effect upon this Court. We are not inclined to accept said contention. Irrespective of coram of the Bench of Apex Court in Delhi Development Authority (supra) case, we are of the view that judgement delivered by the Apex Court in that case has binding effect upon this Court and declaration that the judgement and decree would be liable to be treated as nullity in the event of failure to serve notice by the reference Court, has effective force to adjudicate this case on considering it as a binding precedent.

40. Having regard to the aforesaid discussion, the findings of learned Trial Judge that failure to issue notice would not render the judgement and decree of the reference Court invalid where the requiring body had knowledge of the proceeding, as per my view, is not a sound and good finding.

41. So far as delay is concerned, learned Trial Judge observed that delay condonable when good case is made out, but learned Trial Judge did not exercise discretionary power to condone delay on the reasoning that assertion of right was made after so many years.

42. From the factual matrix of the case it appears that though award was passed on 29th September, 1986 and possession was taken by the requiring body who is the appellant before us, but respondent owners filed reference petition for enhancement of compensation awarded which was registered as L A Case No. 24 of 1989(V) wherein judgement and decree was passed on 4th December, 2000, by 4th Additional Special LA Judge at Alipur and execution proceeding started for executing the decree dated 4th December, 2000 registered as LA execution case No. 34 of 2005, which is still pending. In the said execution proceeding, respondent LA Collector on behalf of State of West Bengal, filed an application under Order 1 Rule 10 of CPC to add the present appellant, the requisitioning body, as a party which was allowed on 8th April, 2008. Assailing the said order passed by the executing Court an application under Article 227 of the Constitution of India was filed by the owner/respondent Nos. 2 & 3 in the High Court at Calcutta registered as C.O. No. 1919 of 2008 and it was disposed of on 22nd April, 2009, by setting aside and quashing the order dated 8th April, 2008 passed by the executing Court allowing addition of present appellant as a party in the said execution proceeding. The reason assigned by the Hon''ble High Court in the 227 application being C.O. No. 1919 of 2010 to quash the order of executing Court that appellant, requisitioning body was not entitled to be added as a party, unless it was shown that the judgement and decree was nullity due to non-service of notice of the proceeding u/s 18 of the Land Acquisition Act by the reference Court. It was held that the judgement and decree was not nullity on that lapse and as such requiring body had no locus standi to be added as a party in the execution proceeding, to oppose execution proceeding. However, Hon''ble Judge kept the matter open regarding challenge of judgement and decree, by the requisitioning body, in accordance with law in the appropriate forum.

43. Be it noted that said judgement was passed prior to judgement of Apex Court passed in the case Delhi Development Authority (supra) considering decree, is liable to be treated as nullity. Judgement of High Court passed in C.O. No. 1919 of 2008, was challenged in a SLP by the present appellant being SLP No. CC 4004/2010 which stood dismissed on 22nd March, 2010 by a non-speaking order. Immediately thereafter more precisely, within fortnight from the date of dismissal of Special Leave Petition, requiring body moved writ application, judgement of which is under challenge before us, praying quashing and setting aside the judgement and decree of reference Court.

44. Beside the aforesaid proceedings as discussed, there are other factors regarding initiation of Civil Appeals by different parties. The respondent Nos. 2 and 3, in a regular first appeal registered as FAT 1909 of 2000 subsequently numbered as FA 227 of 2004 challenged decree of reference Court and that appeal is still pending in the High Court at Calcutta. State of West Bengal also referred an appeal belatedly assailing the judgement and decree of reference Court aforesaid, registered as FAT 3536 of 2003. In the application u/s 5 of Limitation Act seeking condonation of delay, registered as CAN No. 1223 of 2004, on 11th March, 2004, an order was passed directing State of West Bengal to deposit Rs. 88 lacs which is 50% of the awarded money within 31st May, 2004 with a default clause of dismissal of said application. No amount deposited, so said appeal stood dismissed by necessary implication of default clause aforesaid on 31st May, 2004. An application CAN 7710 of 2003 was moved by the respondent No. 2 and 3 erstwhile owners of the land seeking formal order of High Court regarding dismissal of appeal and for necessary order to proceed with execution proceeding which was allowed by the order dated 16th August, 2004 by High Court without prejudice to rights of the respondents Nos. 2 and 3 in their appeal FA 227 of 2004. Execution proceeding thereafter started. On issue of addition of party in execution proceeding, matter ultimately laid upto the Apex Court and SLP dismissed on 22nd March, 2010. Present writ application was filed on 7th April, 2010.

45. From the factual matrix of aforesaid cases and counter cases as discussed above, it is clear that though initially the requisitioning body did not take any steps assailing judgement and decree of reference Court directly, but indirectly appellant was involved in the legal proceeding firstly in the execution case filed by the respondent Nos. 2 and 3, thereafter in civil order under Article 227 of Constitution of India and subsequently in Apex Court.

46. In view of such special facts of the case about continuation of litigation in different Courts as discussed in details in writ application and having regard to law of the land declared under Article 141 of the Constitution of India, holding, inter alia, the duty of reference Court to serve notice to the requisitioning body about proceeding u/s 18 of the said Act before adjudication of the same relating to prayer for enhancement of the compensation amount and particularly from the latest view of the Apex Court in Delhi Development Authority case (supra) wherein it is held that non compliance of service of notice to the requisitioning body by the reference Court will make the judgement and decree nullity in the eye of law, we are of the view that sufficient explanation made to condone the delay and a strong prima facie case made out for adjudication by the writ Court. The judgement and decree of the reference Court as yet has not reached its finality, particularly for the reason that respondents No. 2 and 3 have challenged the same being dissatisfied with quantification of compensation amount, despite enhancement of awarded amount, which is pending still now in the High Court at Calcutta. We have been informed that awarded amount has already been paid to the respondent Nos. 2 and 3 and dispute is now on issue of enhance amount.

The enhance amount which is the subject matter of decree of reference Court since is under challenge by the erstwhile owners respondent Nos. 2 and 3 in the High Court at Calcutta in the first appeal, if the writ application is hoard on merit by condonoing delay, the respondent Nos. 2 and 3 will not suffer any prejudice. In the instant case, there is no question of accruing of third party interest and prejudice.

47. Regarding condonation of delay, it is settled legal position that issue should be construed in pragmatic and justice oriented manner. Reliance is placed to paragraphs 11 and 12 of the judgement of three Judges Bench passed in the case State of Haryana Vs. Chandra Mani and others, wherein on considering about 16 cases of the Apex Court, point has been dealt with favouring substantive justice approach to the litigation by considering the issue in a pragmatic and not in pedantic manner.

48. In the case Basanti Prasad Vs. The Chairman, Bihar School Examination Board and Others, , Apex Court opened a new window for consideration of delay issue, by holding, inter alia, that there is no inviolable rule that whenever there is delay, Court must refuse to entertain a petition. It is held that Writ Court in exercise of extraordinary jurisdiction under Article 226 of Constitution of India, may condone delay if it is satisfactorily explained. In that case order of termination of husband passed in the year 1992 was challenged by a proceeding initiated in the year 2007. The Apex Court condoned delay to grant pension, gratuity etc. The principle applied in Basanti Prosad (supra) by quoting the judgement of the case Lindsay Petroleum Co. vs. Prosper Armstrong Hurd passed in the case (1874) 5 PC 221, was relied further in the case Shankara Co-op Housing Society Ltd. Vs. M. Prabhakar and Others, The relevant paragraphs 47 to 54 from Shankara Cooperative Housing Society Limited (supra) about principle as to be considered to condone delay are quoted hereinbelow:-

47. The Privy Council in Lindsay Petroleum Co. vs. Hurd, which was approved by this Court in Moon Mills Ltd. vs. Industrial Court and Maharashtra SRTC vs. Balwant Regular Motor Service, has stated: (Lindsay Petroleum Co. case, LR pp. 239-40)

Now the doctrine of laches in Courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which

might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy.

47. In *Amrit Lal Berry and Another Vs. Collector of Central Excise, New Delhi and Others*, , this Court took the view that: (SCC p. 726, para 16)

16. If a petitioner has been so remiss or negligent as to approach the Court for relief after an inordinate and unexplained delay, he certainly jeopardises his claims as it may become inequitable, with circumstances altered by lapse of time and other facts, to enforce a fundamental right to the detriment of the similar claims of innocent third persons.

48. In *State of Maharashtra Vs. Digambar*, this Court observed that: (SCC p. 683 d)

Unless the facts and circumstances of the case at hand clearly justify the laches or undue delay, writ petitioners are not entitled to any relief against anybody including the State.

49. In *Shiv Dass Vs. Union of India (UOI) and Others*, , this Court opined that: (SCC p. 277, para 8)

8.... The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

50. In *City and Industrial Development Corporation Vs. Dosu Aardeshir Bhiwandiwalla and Others*, this Court held (SCC 174, para 26)

26. It is well settled and needs no restatement at our hands that under Article 226 of the Constitution, the jurisdiction of a High Court to issue appropriate writs particularly a writ of mandamus is highly discretionary. The relief cannot be claimed as of right. One of the grounds for refusing relief is that the person approaching the High Court is guilty of unexplained delay and the laches. Inordinate delay in moving the Court for a writ is an adequate ground for refusing a writ. The principle is that the Courts exercising public law jurisdiction do not encourage agitation of stale claims and exhuming matters where the rights of third parties may have accrued in the interregnum.

51. In *State of M.P. and Others Vs. Nandlal Jaiswal and Others*, , wherein this Court has stated: (SCC p. 595, para 24)

24..... This rule of laches or delay is not a rigid rule which can be cast in a straitjacket formula, for there may be cases where despite delay and creation of

third-party rights the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner. But, such cases where the demand of justice is so compelling that the High Court would be inclined to interfere in spite of delay or creation of third-party rights would by their very nature be few and far between. Ultimately it would be a matter within the discretion of the Court; ex hypothesi every discretion must be exercised fairly and justly so as to promote justice and not to defeat it.

52. Reliance is also placed on the observations made by this Court in *M/s. Dehri Rohtas Light Railway Company Limited Vs. District Board, Bhojpur and District Board, Shahabad and others*, wherein it is observed: (SCC pp. 602-03, para 13)

13. The rule which says that the Court may not enquire into belated and stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion. Each case must depend upon its own facts. It will all depend on what the breach of the fundamental right and the remedy claimed are and how delay arose. The principle on which the relief to the party on the grounds of laches or delay is denied is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is a reasonable explanation for the delay. The real test to determine delay in such cases is that the petitioner should come to the writ Court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not as to physical running of time. Where the circumstances justifying the conduct exist, the illegality which is manifest cannot be sustained on the sole ground of laches.

53. The relevant consideration, in determining whether delay or laches should be put against a person who approaches the writ Court under Article 226 of the Constitution is now well settled. They are:

(1) There is no inviolable rule of law that whenever there is a delay, the Court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts.

(2) The principle on which the Court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because Court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners.

(3) The satisfactory way of explaining delay in making an application under Article 226 is for the petitioner to show that he had been seeking relief elsewhere in a manner provided by law. If he runs after a remedy not provided in the statute or the statutory rules, if he runs after a remedy not provided in the statute or the statutory rules, it is not desirable for the High Court to condone the delay. It is immaterial what the petitioner chooses to believe in regard to the

remedy.

(4) No hard-and-fast rule, can be laid down in this regard. Every case shall have to be decided on its own facts.

(5) That representations would not be adequate explanation to take care of the delay.

49. Having regard to those judgements referred to and the parameters for consideration to entertain a writ application on the principle as summarised in paragraph 54 quoted, we are finding merit for entertaining the writ application. It appears from the factual matrix that the requisitioning body was involved for remedy in other forum unsuccessfully as the forum was execution proceeding where normally no scope remains to add a new party, but soon the issue finally decided by the Apex Court by dismissing his stand about eligibility to be added as a party in execution proceeding, the requisitioning body moved writ application, a forum to adjudicate grievances declared by the Apex Court judgements as earlier discussed, assailing the decree of reference Court.

50. The Apex Court opened another angle i.e. merit window, by holding *inter alia*, that if any arguable case is made out, technicalities of time limit, cannot be an embargo to condone delay. Reliance is placed to the judgement passed in the case *State of Nagaland Vs. Lipok AO and Others*, , *Ram Nath Sao @ Ram Nath Sahu and Others Vs. Gobardhan Sao and Others*, and *Chandramani & Ors.* (supra). On merit angle *prima facie* a strong case has been made out in the writ application for adjudication, particularly on the reflection of the judgement of Apex Court passed in the case *Delhi Development Authority* (supra), holding that decree is liable to be nullity due to lapse to serve notice to the requiring body. As such in that angle writ application was required to be admitted for hearing.

51. Regarding sufficiency of the reason to condone delay, it is the view of the Apex Court that it is not limited to any period of time but based on logic of averments of delay. Reliance is placed to the judgement passed in the case *Hemant Bhimappa Gadivaddar vs. State of Karnataka*, 2000 (9) SCC 732 *State of Bihar and Another Vs. Abhay Chand Bothra*, , *N. Balakrishnan Vs. M. Krishnamurthy*, and the case *Chandramani* (supra).

52. In the instant case sufficiency of reason has been asserted by a logical explanation detailing different proceedings right from the execution proceeding to the SLP of Apex Court and which in our view is satisfactory and sufficient explanation. On merit angle also, an arguable case has been made out, having regard to the judgement passed in the case *Delhi Development Authority* (supra), wherein Apex Court declared consequence of non-service of notice by reference Court to the requisitioning body as nullity of decree. When there is a nullity of a decree, it is assailable any time and limitation will not be an embargo to adjudicate writ petition on merit.

53. On merit of writ application learned advocate for the respondent Nos. 2 and

3, has opposed this appeal by arguing in different angle namely, suppression of material facts, knowledge of pendency of appeal preferred by the State Government etc. and relied upon different judgements which we are not referring, as those are not relevant for adjudication of present appeal. On the point of suppression of fact as argued, on reading the writ application we do not find any suppression of the material facts, save and except two letters communicated by the State of West Bengal which speak that requisitioning body had knowledge of first appeal preferred by the State of West Bengal and the conditional order of the High Court to condone delay. Knowledge of proceeding itself, will not extinguish right of writ petitioner/appellant, to agitate his grievance due to settle law of the land under Article 141 of the Constitution of India, declaring duty and responsibility of reference Court to serve notice to the requisitioning body prior to final adjudication of proceeding u/s 18 of the Land Acquisition Act relating to enhancement of the compensation amount and declaring that lapse of such, will invite fate of nullity of decree of reference Court.

54. Requisitioning body is vitally affected and interested party when in a proceeding u/s 18 of the said Act awarded amount is enhanced and continuation of adjudicatory process in his presence, is must, considering that Apex Court has declared law by constitutional bench judgement in the case U.P Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc., and this judgement was applied subsequently in the latest case Delhi Development Authority (supra). It is further held by said judgement as referred to that remedy to the requisitioning body under such a situation is to challenge the judgement and decree of reference Court either in an appeal or in writ application under Article 226 of the Constitution of India.

55. In view of aforesaid findings and observations, we are of the view that the impugned judgement of the learned Trial Judge dismissing writ application only on ground of delay, is not legally sustainable. We hold that writ application is maintainable. Since learned Trial Judge at the admission stage dismissed the writ application solely on ground of delay and since the respondent Nos. 2 and 3 have urged other points attacking the merit of writ application, we are of the view that in spite of argument advanced touching the merit of the writ application, namely res judicata, suppression of material fact etc., we are not inclined to adjudicate it on merit, as in adjudicating the same, one of the parties will loose appeal forum. Considering that, impugned judgement and order stand set aside and quashed holding writ is admitted for hearing on merit. Delay point stand decided by us. Writ application is to be heard by learned Trial Judge on merit. It is made clear that findings and observation made by us while disposing of this appeal, is limited only with reference to the impugned order. In view of the order admitting writ, there will be an interim order of stay of the judgement and decree dated 4th December, 2000 passed by the reference Court, 4th Additional Special L.A. Judge at Alipur in L.A. Case No. 24/89(V) and the execution proceeding being L.A. Case No. 34 of 2005 till the final disposal of the writ application, since the acquisition proceeding started long back, learned Trial Judge is requested to

dispose of the main writ application on merit as expeditiously as possible directing the parties to file their respective affidavit-in-opposition and reply etc..

Appeal is thus allowed, by quashing and setting aside the impugned judgment and order dated 11th June, 2010 passed in W.P. No. 7104 (w) of 2010. No order as to cost.

Md. Abdul Ghani, J.

I agree.