

(2004) 12 CAL CK 0012
In the Calcutta High Court
Case No : F.M.A. No's. 464-465 of 2001

Calcutta Metropolitan Development Authority	APPELLANT
Vs	
State of West Bengal and Others	RESPONDENT

Date of Decision : 13-12-2004

Acts Referred:

Calcutta Metropolitan Development Authority Act, 1972 — Section 10, 11, 15, 16, 17
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Constitution of India, 1950 — Article 14, 19(1), 226, 300A, 31A
Hooghly River Bridge Act, 1969 — Section 24
Land Acquisition Act, 1894 — Section 17, 18, 18(2), 19, 20
Limitation Act, 1963 — Section 5
West Bengal Land (Requisition and Acquisition) Act, 1948 — Section 2(2), 3, 4(1), 5, 7
West Bengal Town and Country (Planning and Development) Act, 1979 — Section 142, 142(3), 43

Citation : (2005) 2 CALLT 141

Hon'ble Judges : Rajendra Nath Sinha, J; Dilip Kumar Seth, J

Bench : Division Bench

Advocate : P.K. Das and P.S. Basu, for the Appellant; Amar Nath Banerjee, Saktinath Mukherjee, Asok De, Debaprasad Mukherjee, Ashima Das (Sil) for Respondent Nos. 3 to 15 and Soumen Dasgupta and Subrata Kumar Dutta, for the Respondent

Final Decision : Allowed

Judgement

Dilip Kumar Seth, J.—These two appeals of the Calcutta Metropolitan Development Authority (CMDA) have been preferred against the order dated 7th February 2001 passed by the learned single Judge in W.P. No. 11615 of 1998 and W.P. No. 11616(W) of 1998 arising out of L.R.A. Case No. 541 of 1993(V) and 487 of 1993 (V) both dated 26th June, 1996. Since the grounds of challenge were identical, the two writ petitions were heard together and were disposed of by a common judgment. The two appeals, therefore, were also heard together. We propose to dispose of the same by a common judgment.

The Facts:

2. The facts in brief are summarised thus. For the benefit of the CMDA, the lands were acquired by the State Government under the provisions of West Bengal Land (Requisition and Acquisition) Act, 1948 (1948 Act). On a reference u/s 8 of the 1948 Act against the award passed u/s 7 thereof, no notice of the reference, admittedly, was served upon the appellant (CMDA), the requiring body and person interested within the meaning of Section 2(b)(2). The determination of the amount is alleged to be too high affecting the interest of the requiring body. Therefore, the award passed on reference is to be set aside and the reference be re-heard afresh after giving opportunity to the CMDA.

Submission on behalf of the appellant:

3. Mr. Das, appearing on behalf of the appellant submitted that on a reference u/s 8 of the 1948 Act, it is incumbent on the Court to issue notice upon the person interested and as such non-service of notice, which is an admitted proposition, would render the award by the Court invalid and a nullity. According to him, by reason of Section 8(2), the provisions of the Land Acquisition Act, 1894 (L.A. Act) contained in Sections 18(2), 19-22, 25-28 have been made applicable. He relied on the decision in Neelagangabai and another Vs. State of Karnataka and others, to support his contention that non-service of notice on the requiring body deprived it of an opportunity to place its case before the Court rendering the judgment of the reference Court illegal and not binding on the Corporation and that such a question can be raised through a proceedings under Article 226 of the Constitution of India. Mr. Das then relied upon a decision in U.P. Awasthi Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc., . Relying on this decision, he contended that the right u/s 50(2) of the Land Acquisition Act confers a right on the requiring body to appear in the acquisition proceedings before the Collector and the reference and adduce evidence for the purpose of determining the amount of compensation. The said right carries with it the right to be given adequate notice by the Collector as well as the reference Court. It only precludes the requiring body from seeking a reference but it does not deprive the local authority, if it feels aggrieved by the determination of the compensation by the reference Court, of invoking the remedy available under the Land Acquisition Act. Even, if notices have been served on the requiring body, the remedy under Article 226 would still be open to the requiring body to challenge the award on grounds permitting judicial review under Article 226. The requiring body is a proper party in a proceedings before the reference Court and is entitled to be impleaded as a party wherein it can defend the determination and oppose the enhancement and adduce evidence in that regard. In case of enhancement by the reference Court, if no appeal is filed by the Government, the local authority can file the appeal after obtaining leave of the Court. Mr. Das then relied on the decision in M/s. Neyveli Lignite Corpn. Ltd. Vs. Special Tahsildar (Land Acquisition), Neyveli and others, in order to support his contention that the requiring body is also a person interested. Relying on a decision in 12, 12, I.C. Bose Road Tenants' Association Vs. Collector of Howrah and Others, , he submitted that the CMDA is a local authority. Referring to the decision in Smt.

Kanak and Another Vs. U.P. Avas Evam Vikas Parishad and Others, , Mr. Das contended that non-service of notice causes serious prejudice to the requiring body and in such a situation the remedy under Article 226 can be invoked for setting aside the Award and referring the matter to the reference Court for determining the compensation afresh. Mr. Das drew support from Abdul Rasak and Others Vs. Kerala Water Authority and Others, to substantiate his contention that a notice to the requiring body on a reference is mandatory and simply because the local authority was aware of the proceedings and had participated in the meetings where matter as to compensation were discussed were not sufficient compliance with Section 50 of the Land Acquisition Act. For the same proposition, he relied on Agra Development Authority Vs. Special Land Acquisition Officer and Others, . He further relied on the decision in Project Officer, The Project Officer, Singareni collieries Company Ltd. Vs. B. Komaraiah and Others, to support his contention that the compensation enhanced by the Civil Court are not binding on the requiring body since it was not a party to the proceedings in the reference Court and such a question can be challenged in a writ proceedings. Relying on the decision in P.C. Goswami Vs. Collector of Darrang, , Mr. Das contended that there is no justification for discriminating between an acquisition under one Act and acquisition under another Act. Mr. Das also relied on Himalaya Tiles and Marble (P) Ltd. Vs. Francis Victor Coutinho (dead) by LR's., in order to contend that the definition of the person interested is an inclusive definition and must be liberally construed so as to embrace all persons who may be directly or indirectly interested. He pointed out that the expression used in Land Acquisition Act to define "person interested" is identical with those in the definition of "person interested" in the 1948 Act. He then upon the decision in Yadu Nandan Garg Vs. State of Rajasthan and Others, to support his contention that if there is something wrong, in that event, Article 14 will not come in aid on the ground of invidious discrimination.

Submission on behalf of the Respondents:

4. Mr. Amar Nath Banerjee, learned counsel for the appellant in one of the appeal submitted that under Act 2 of 1948 it is only the State, which can acquire for itself not for any other authority. In a proceedings under the 1948 Act, provisions of the other Act cannot be invoked except those mentioned in Section 8(2) of the 1948 Act on account of the 1948 Act being a complete Code in itself. The notice does not mention that the land was being acquired for the CMDA. u/s 5 if the CMDA obtains any benefit, it will do so as an agent of the State acquiring the property and not in its independent capacity of local authority. The CMDA had knowledge of the proceedings u/s 7 before the Collector. While borrowing the principles of the Land Acquisition Act u/s 8(2) the provisions of Section 50 of the Land Acquisition Act was omitted and as such the principles of Section 50 of the Land Acquisition Act would not be attracted in a case governed under the 1948 Act. Since the requisition could not be initiated at the instance of the CMDA and, therefore, the requisition being not in accordance with law, the CMDA cannot claim locus standi to challenge the payment of compensation and as such the

CMDA cannot come within the purview of the "person interested" defined under the 1948 Act. Therefore, the CMDA was not entitled to any notice. Though admittedly notices were not served on the CMDA, the benefit of Section 50 of Land Acquisition Act cannot be attracted. The 1948 Act being a complete Code in itself, the provisions of the Land Acquisition Act cannot be borrowed to supplement the provisions of that Act. The intention of the legislature was clear in incorporating the provisions of Sections 18(2), 19-22, 25-28 of the Land Acquisition Act omitting the provisions of Section 50 thereof, the benefit thereof cannot, therefore, be claimed in a proceedings under the 1948 Act. Notices were given to the Collector. The Collector did not raise any objection that the CMDA was interested. No oral evidence was adduced. The Court proceeded on the basis of its own judgment in similar case in the same acquisition proceedings passed earlier. In support of his contention, Mr. Banerjee relied upon the decision in *Municipal Council, Jalna v. State of Maharashtra* and Ors. 2003(1) ICC 732 (Bom) which followed the decision in *U.P. Awas Evam Vikas Parishad v. Gyan Devi* AIR 1975 SC 724 .

4.1. Mr. Saktinath Mukherjee appearing in the other appeal adopted the argument of Mr. Banerjee and contended further that the 1948 Act is available only to the State. Unlike Land Acquisition Act, the provisions of 1948 Act cannot be resorted to on behalf of any other authority other than the State. To support his contention he relied on *Sandhya Mukhoti v. Additional District Magistrate, 24 Parganas* 1977(2) CLJ 375 and *Smt. Sushila Devi Fomra v. State of West Bengal* 1980(2) CLJ 19 : 1984CWN 665. The 1948 Act postulates a speedy requisition and acquisition. It does not envisage any notice or enquiry or opportunity before requisition and acquisition. According to him, the proceedings of the 1948 Act are draconian in nature. While incorporating the provisions of the Land Acquisition Act in Section 8(2) of the 1948 Act Section 50 of the Land Acquisition Act was omitted. The omission was intended by the Legislature, since 1948 Act never conceived of anyone behind the screen being benefited. Even if the CMDA is the beneficiary, it is the State who represents the CMDA, which has no independent status without the State. Therefore, it cannot object nor it can claim any notice. Without Section 50 of the Land Acquisition Act, the requiring body does not acquire any locus. He distinguished all the decisions cited by Mr. Das that these were based on Section 50 of the Land Acquisition Act. In support of his contention, he relied on *U.P. Awas Evam Vikas Parishad v. Gyan Devi* AIR 1975 SC 724 (para 24-25).

4.2. In these cases, the CMDA is merely an implementing authority on behalf of the State. The CMDA is not the owner of the road constructed. It is the State who is the owner of the road. He next contended that once the matter stands finally concluded the same cannot be reopened. Referring to page 21 of the paper book, Mr. Mukherjee submitted pointing out that the CMDA was informed of the final conclusion after the application u/s 5 of the Limitation Act filed by the State in its appeal was dismissed. The writ petition was affirmed on June 24, 1988 and was moved on 30th June 1988, the State Government's appeal was

filed thereafter and the appeal was allowed to be dismissed by the State and therefore the award became final. Now it cannot be reopened.

4.3. Mr. Mukherjee then contended that the writ petition was not maintainable in view of the alternative remedy available to the CMDA. According to him, despite dismissal of the appeal filed by the State, the CMDA was entitled to file appeal independent of the State, which it did not do. Therefore, on the principle of alternative remedy, the writ petition cannot be maintained. To support his contention he relied on *A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhvani and Another*, (paras 8, 10) and *Union of India and others Vs. Special Tehsildar (ZA) and others*, (para 10). Mr. Mukherjee also relied upon Section 43 of the West Bengal Town & Country (Planning & Development) Act, 1979 under which land required for the purpose of said 1979 Act are required to be acquired under the Land Acquisition Act and not otherwise. Whereas u/s 24 of the Hooghly River Bridge Act, 1969, land could be acquired either under the Land Acquisition Act or under the 1948 Act. Therefore, in the absence of any specific provisions made in The Calcutta Metropolitan Development Authority Act, the land could not have been acquired under the 1948 Act. In the circumstances, the appeal should be dismissed.

The appellant's reply:

5. In reply Mrs. Das contended that u/s 18 of the Calcutta Metropolitan Development Authority Act, 1972, land can be acquired under the 1948 Act. The land was acquired before the West Bengal Town & Country (Planning & Development) Act, 1979 (1979 Act) came into force. The notice u/s 4(1)(a) of the 1948 Act was issued in 1973. He relied on the decision in *Himalaya Tiles and Marble (P) Ltd. Vs. Francis Victor Coutinho (dead) by LR's.*, to support of his contention that the beneficiary is a "person interested". He contended that the principles laid down in the decision in *Union of India and others Vs. Special Tehsildar (ZA) and others*, does not apply. He distinguished the decision on the ground that here 40 bighas of land were involved whereas in the said case only 10 bighas of land were involved. He placed reliance, to support his contention, upon *Yadu Nandan Garg Vs. State of Rajasthan and Others*, (para 5). He also distinguished the decision in *Sandhya Mukhoti* 1977(2) CLJ 375 (supra) referring to page 380 and contended that acquisition for company, society, individual would not be a public purpose. He also distinguished the decision in *Smt. Sushila Devi Fomra* 1980(2) CLJ 19 (supra).

Reply by Mr. Mukherjee:

6. Since, Mr. Das had relied on a few more decisions, which he did not rely upon initially, with leave of the Court, Mr. Mukherjee replied to the decisions and contended, inter alia, that unless there is urgency the provisions of the 1948 Act cannot be invoked. To support his contention, he relied on the decision in *Sushila Debi and Ors. v. State of West Bengal and Ors.* 1989(2) CHN 232; *Sandeep Kumar Bhakat and Ors. v. State of West Bengal and Ors.* 1992(2) CLJ 267 and

Samarendra Nath Pal v. Collector, Hooghly and Ors. 1997(1) CLJ 370. He also relied on Setalbad Commission on Law of Acquisition, 10th Report and pointed out that Section 17 of the Land Acquisition Act was amended in 1984 pursuant to the recommendation of the Law Commission. He specifically placed reliance on paragraphs 17 and 18 of the Report and Appendix V. Section 3 of the 1948 Act can be invoked only for the specified purpose, which is different from those of the Land Acquisition Act. The 1948 Act postulates requisition and acquisition without notice and without opportunity. Due to this reason, Section 50 of the Land Acquisition Act was omitted by the legislature intentionally. He further placed his reliance on S.C. Ghosh on Land Acquisition 1984 Edn. footnote u/s 7 at page 1117, to support his contention that scheme of the two Acts are completely different. Omission of Section 50 of the Land Acquisition Act is intended by the Legislature and as such one cannot avail of the benefit available u/s 50 of the Land Acquisition Act when 1948 Act is resorted to. One has to take the 1948 Act under which the land was requisitioned and acquired as it is. Therefore, the principles of Section 50 of the Land Acquisition Act cannot be attracted.

Whether the 1948 Act could be resorted to for acquisition of land for the CMDA?:

7. The answer is simple and is in the affirmative. The CMDA is a local authority constituted under the provisions of the Calcutta Metropolitan Development Authority Act, 1972 (1972 Act). By virtue of Section 18 of the CMDA Act, any land required for the CMDA, for carrying out its function under the Act, could be acquired "by the State Government in accordance with any law for the time being in force".

7.1. Therefore, the contention raised by Mr. Banerjee and Mr. Mukherjee respectively relying the provisions contained in the 1948 Act in contradistinction with those of the Land Acquisition Act would not be relevant for our present purpose. That apart, the 1948 Act mentions the purposes in which the Act can be invoked. These lands were acquired for the construction of a road. Construction of a road is a purpose of maintaining supplies and services essential to the life of the community and for providing proper facilities for transport, communication, purposes postulated within the scope and ambit of the 1948 Act. In view of Section 18 of the 1972 Act, the 1948 Act being any law for the time being in force, there could not be any hindrance in resorting to the 1948 Act. Mr. Mukherjee contended that it could be done in view of Section 24 of the Hooghly River Bridge Act, 1969. On the same analogy, we can safely hold that the 1948 Act can be resorted to for acquiring land for the CMDA in view of Section 18 of the 1972 Act.

7.2. This is so on account of the fact that the notice u/s 4(1)(a) of the 1948 Act was issued in 1973, viz., before the 1979 Act came into force.

7.3. Mr. Mukherjee relied upon the decisions in Sandhya Mukhoti v. A.D. Magistrate, 24 Parganas 1977(2) CLJ 375 and Smt. Sushila Devi Fomra v. State

of West Bengal 1980(2) CLJ 7 : 1984 CWN 661. These two decisions would not apply in the present case in view of the legal proposition emanating from Section 18 of the 1972 Act, as discussed above.

Whether the CMDA is a person interested within the meaning of Section 2(b)(2) of the 1948 Act?:

8. The definition of person interested is inclusive in nature. It does not restrict its meaning only to the person whose land is acquired. The expression used in the definition includes the acquiring authority as well as the beneficiary. On the acquisition of the land, the claimant is entitled to compensation. The compensation is payable by the beneficiary. Therefore, the beneficiary has an interest in the determination of the compensation. The acquiring authority is also equally interested in the payment of compensation. The interest of the claimant and those of the acquiring authority and the beneficiary may be different in nature, but each have an interest in it. One may be interested in the compensation as claimant or recipient. The other may be interested in the compensation because the same is borne out of its fund. The one is interested in getting more and the other in paying less. But both are interested in the compensation though opposed to each other. Therefore, the CMDA is a person interested within the meaning of the definition of Section 2(b)(2) of 1948 Act.

8.1. Section 20 of the Land Acquisition Act incorporated u/s 8(2) of the 1948 Act applies to a proceeding for determination of compensation on a reference u/s 8(1) of the 1948 Act. Section 20 requires service of notice upon person interested in the compensation.

8.2. The definition of person interested as defined in the 1948 Act, uses the identical expression used in the Land Acquisition Act. Therefore, there is no difference on the question of person interested under the Land Acquisition Act or under the 1948 Act. Therefore, the decisions dealing with person interested under the Land Acquisition Act would be equally applicable for the purpose of interpreting person interested defined in the 1948 Act. Thus, in the present case, the CMDA is a person interested within the meaning and ratio decided in M/s. Neyvely Lignite Corporation Ltd. (supra) and Himalaya Tiles and Marble (P) Ltd. (supra).

Whether the CMDA can raise any objection to the determination of the compensation and entitled to have notice of the reference?:

9. Mr. Mukherjee contended that in the present case, the CMDA was merely an implementing authority. It was not the owner of the road constructed. It is the State who is the owner of the road. The CMDA in fact represented the State. It had neither independent status nor any interest in the road to be constructed. Therefore, in the absence of any independent interest or status the CMDA could not claim any locus or right to be served with a notice of reference or to objection to the determination of compensation. On the other hand, Mr. Banerjee had contended that since the requisition could not be initiated at the instance of

the CMDA, therefore, the requisition being not in accordance with law, the CMDA has no locus standi to challenge the determination of compensation. At the same time, it is not entitled to any notice. Therefore, the CMDA does not come under the purview of the definition of "person interested" defined in the 1948 Act.

9.1. The above contention seems to be fallacious. It may not have any independent status for the purpose of construction of the road or any interest therein. But, it may be remembered that the CMDA, a body corporate with perpetual succession and a common seal, is a statutory authority. The CMDA has been held to be a local authority in *12, 12, I.C. Bose Road Tenants' Association Vs. Collector of Howrah and Others*, . It so appears by reason of the provisions contained in Sections 3, 6, 7, 9, 10, 11 and 15 to 18 of the 1972 Act. These provisions clearly indicate that the CMDA is a legal entity, independent of the State, created for the purpose of formulation and execution of the plans for the development of Calcutta Metropolitan area and for the coordination and supervision of the execution of such plans and for matters connected therewith or incidental thereto. The above provisions also clearly indicate that the CMDA is entitled to manage its own funds independent of the State and as such local authority it has an independent status or in other words has an obligation to minimise the cost for which the CMDA is an interested person in the determination of compensation through reference and thus entitled to notice.

9.2. The contention that the 1972 Act stood repealed by reason of Section 142 of West Bengal Town & Country (Planning & Development) Act, 1979. But the saving clause provided in Section 142(3) saves the action already undertaken notwithstanding the repeal. The action does not seem to be inconsistent with the Town & Country Planning Act and, therefore, in the absence of any rules and regulations contrary thereto, the force thereof would continue. The mischief of Section 43 of the Town and Country Planning Act would not have the effect of eclipsing or superseding the action already taken.

9.3. Mr. Banerjee had contended that the notice issued for requisition and acquisition of the land did not mention that it was acquired for the purpose of the CMDA. In such a situation, if the CMDA obtains benefit it will do so as an agent of the State acquiring the property but not in its own independent capacity of a local authority.

9.4. Omission to refer in the notice that the land was being acquired for the CMDA would not make any difference even if the CMDA obtains the benefit as an agency of the State, acquiring the property. It stands on a footing different from that of the State, particularly, when the funds are coming through the agency. The State in its own purposes may distribute its functions and delegate the same statutorily. When such delegation is made within the scheme of a statute the provisions of the statute cannot be ignored. The case has to be looked into on the basis of the provisions contained in the statute creating a particular authority i.e. a local authority. We cannot ignore the status and identity or legal entity of the CMDA different from that of the State. Though it may not claim any interest

on the ultimate result of the action undertaken, function discharged or obligation cast upon it, the interest in the functions discharged and the obligations cast upon it, is definitely an interest of a legal entity with status and identity different from the State. Therefore, in our view, the CMDA was entitled to notice and to raise objection to the determination of the compensation.

9.5. Thus the CMDA having independent status and identity is entitled to object to the determination of compensation. Inasmuch as, the compensation would be borne out of the fund controlled by the CMDA. It has to manage and control its funds for the purpose for which it is created and the functions it discharges. As a person interested, the CMDA is definitely entitled to notice in view of Section 20 of the Land Acquisition Act, which requires issue of notice of reference upon person interested in the compensation.

9.6. This is so in view of the ratio laid down in the decisions in Neelagangabai (supra); Gyan Devi (supra); Kanak (Smt.) (supra); Abdul Rasak (supra) and Agra Development Authority (supra).

Whether in the absence of notice of reference to the CMDA would affect the determination of the compensation?:

10. It is contended by Mr. Banerjee that while incorporating the provisions of the Land Acquisition Act in Section 8(2) of the 1948 Act, Section 50 of the Land Acquisition Act was omitted. This omission clearly indicates that the provisions of Section 50 of the Land Acquisition Act would not apply in a proceeding under the 1948 Act. He further contended that the 1948 Act is a complete Code in itself. The provisions of the Land Acquisition Act can only be borrowed to supplement the provisions of the 1948 Act only to the extent contemplated in Section 8(2) of the 1948 Act. Section 8(2) of the 1948 Act does not include Section 50 of the Land Acquisition Act when incorporating Section 18(2), Sections 19-22, 25-28. The CMDA cannot claim the benefit of Section 50 of the Land Acquisition Act in a proceeding under the 1948 Act. It cannot claim any benefit, which is not available statutorily. The entire right is based on the right conferred by the statute. It cannot travel beyond the scope of the statute. It cannot incorporate or borrow something foreign to the statute.

10.1. Whereas Mr. Mukherjee contended that when Section 50 of the Land Acquisition Act having not been incorporated, the CMDA cannot be said to have acquired any locus u/s 50 of the Land Acquisition Act. Therefore, the cases cited by Mr. Das in support of the locus of the CMDA relying on the decisions related to Section 50 of the Land Acquisition Act would not help him to support his contention. Mr. Mukherjee relied on the decision in U.P. Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc., (para 24-25) to support his contention.

10.2. On the other hand, Mr. Das contended that when Section 18 is incorporated and a person interested mentioned in Section 18 of the Land Acquisition Act applies to a proceedings u/s 8(2) of the 1948 Act, the entitlement to notice

cannot be denied. He relied on the decisions cited by him on this point.

10.3. Section 8(2) of the 1948 Act, as contended by Mr. Mukherjee and Mr. Banerjee, indicates the intention of the legislature not to incorporate the provisions of Section 50 of the Land Acquisition Act in course of a proceeding u/s 8(1) of the former Act. But, would that preclude the CMDA from its right to have notice of the proceeding or its locus to challenge the quantum of compensation? This question has to be looked into on the basis of the principles of construction relying on the rules of interpretation of statutes. Virtually, the principles for determination of compensation as provided in the Land Acquisition Act have been incorporated in the 1948 Act. Section 8(1) itself postulates a proceeding with reference to giving of opportunity to the person interested. A plain reading of Section 8(2) of the 1948 Act indicates that the omission of Section 50 cannot be interpreted to mean that this was omitted by the legislature in order to deny notice of reference to and right of objection to the determination of compensation by a person interested. When the legislature incorporates some of the principles of another legislation and the legislation is a legislation by incorporation, then the said legislation is to be interpreted liberally in furtherance of the object and purpose of the incorporation, not pedantically or technically. The Court cannot presume that the legislature had intended to negate the principles of audi alteram partem, and deny the right to a person interested, despite such person being interested in the compensation, without circumscribing the definition of person interested. A statute has to be interpreted in consonance with the scheme, not out of its context. It has to be reconciled harmonising each of the provisions. If there appears to be any conflict or contradiction, in that event, the same has to be harmonised and reconciled. The outlook of the legislature has to be looked into from an angle which would further the object and purpose and not those which would frustrate the same.

10.4. Having regard to the context, in which the provisions of the 1948 Act, were engrafted and legislated through incorporation of certain provisions from the Land Acquisition Act, the totality of the object and purpose therefore has to be looked into. The interpretation could not be compartmentalized and selective. It has to be reconciled with the whole of the purpose and object and harmonised with the different provisions of both the statute as would be necessary for the purpose of giving effect to the intention of the legislature. This proposition is based on the principle enunciated in *Himalaya Tiles and Marble (P) Ltd.* (supra).

10.5. However, Mr. Das sought to rely upon the decision in *P.C. Goswami Vs. Collector of Darrang*, wherein it was held that all enactments for acquisition are *pari materia* same with the Land Acquisition Act. But, this proposition is not an absolute proposition. In this case the Apex Court was dealing with the question of solatium. On that count it had pointed out that on the question of solatium for acquisition through other legislation are to be treated *pari materia* same with the Land Acquisition Act. Therefore, this decision is not a direct ratio that stares on our face. But at the same time, we may not ignore the ratio that even though the

principles of solatium was not incorporated or borrowed from the Land Acquisition Act, yet, while dealing with acquisition proceedings under certain other enactments without such incorporation, the Apex Court had held that all enactments for acquisition are to be treated *pari materia* the same for the purpose of grant of solatium. If despite the absence of any reference to solatium as in the Land Acquisition Act in such other enactment, with which the Apex Court was dealing, solatium could be read in such enactment, then on the same analogy or principles we cannot treat a proceedings for determination of compensation under the 1948 Act differently from that of one under the Land Acquisition Act when almost all the provisions of the Land Acquisition Act in relation to determination of compensation have been incorporated u/s 8(2) of the 1948 Act. The omission to incorporate Section 50 in the said Act would not deem to denude the CMDA of its character of a person interested as defined in the 1948 Act.

10.6. We have already held that the CMDA is a person interested. Therefore, when the CMDA being a person interested, its interest cannot be ignored or overlooked. At the same time, it cannot be said that the CMDA is a person interested, and despite being so interested, it has no right to raise objection to the determination of compensation or claim notice of reference since Section 50 of the Land Acquisition Act has not been included in Section 8(2) of the 1948 Act. It would be preposterous to say so. Inasmuch as such an interpretation would be directly in conflict with the definition of person interested. While the characteristic of person interested has been conferred on the CMDA then the said characteristic cannot be without the benefits available to the persons interested. No piece of legislation can be said to be redundant. Each part of the legislation is required to be given its due meaning. If we say that the CMDA had no right to notice of reference, the CMDA had no right to object to the determination of compensation, in that event, the definition of person interested in the 1948 Act in relation to the CMDA would be redundant. If we hold that the CMDA is a person interested then its interest must have the ordinary meaning along with the ordinary rights or other benefits available to a person interested. When notices are to be issued to person interested u/s 20(b) of the Land Acquisition Act, the CMDA being a person interested the notice of reference cannot be denied to it nor the right of the CMDA to object to the determination of the compensation can be denied. Therefore, even without the ratio decided in relation to Section 50 of the Land Acquisition Act in various decisions, the right of the CMDA to notice of reference and the right to object to the determination of the compensation exists. There is no difficulty in supporting these principles with the aid of Section 20(b) of the Land Acquisition Act and the ratio decided in *Neelagangabai* (supra); *Gyan Devi* (supra); *Neyvely Lignite Corporation Ltd.* (supra); *Kanak (Smt.)* (supra); *Abdul Rasak* (supra) and *Agra Development Authority* (supra).

10.7. The 1948 Act is a complete Code in itself. The provisions of *audi alterem partem* are inbuilt in the provisions itself. A consolidated reading of the scheme

of the 1948 Act does not indicate that the legislature had ever intended to deny the right of the beneficiary to notice of reference u/s 8 of the 1948 Act or its right to object to the determination of compensation by reason of omission of Section 50 of Land Acquisition Act in Section 8(2) of the 1948 Act. It cannot be said that on account of its being a complete Code on itself, the 1948 Act cannot be invoked except for the purposes specified in the Act when the purpose that we are dealing with is a public purpose within the scope and ambit of the said Act and that the road was constructed in consonance with the purpose mentioned thereunder. Mr. Mukherjee's argument that one cannot avail of the benefit of the Land Acquisition Act if the 1948 Act is resorted to and that one has to take the 1948 Act as it is namely without Section 50 of the Land Acquisition Act since not incorporated does not seem to be of any substance on the face of the discussion we have made above. Inasmuch as even if we take the 1948 Act, without Section 50 of the Land Acquisition Act even then under the scheme of the Act, the notice of compensation to the beneficiary cannot be denied. Inasmuch as Section 20 of the Land Acquisition Act has been incorporated in Section 8(2) of the 1948 Act. u/s 20(b) of the Land Acquisition Act, notice of reference is required to be served upon the person interested. Therefore, due to non-service of notice, the award in reference upon the CMDA would not be binding upon the person interested (CMDA) as was held in Project Officer, Singareni Collieries Company Ltd. (supra)

Whether the knowledge of the CMDA about the acquisition and the proceedings of compensation would preclude the CMDA from its right to notice of reference?:

11. Admittedly, the CMDA had knowledge of the proceedings of the compensation before the Collector. Notice of the reference was given to the Collector. The Collector appeared. But the Collector never raised any objection that the CMDA was interested, or that it should be given notice. At the same time, the Court had proceeded on the basis of its own judgment in similar case in the same acquisition proceedings passed earlier. No oral evidence was adduced.

11.1. This contention of Mr. Banerjee does not seem to have any consequences. Inasmuch as Section 20 of the Land Acquisition Act, since incorporated in the 1948 Act u/s 8(2) of the latter Act, requires giving of notice of reference to (i) the claimant, (ii) the Collector and (iii) any other person interested in the compensation. Therefore, without Section 50 of the Land Acquisition Act by reason of incorporation of Section 20 of the Land Acquisition Act, the CMDA being a person interested is entitled to notice of reference. The provision of Section 20 is independent of and is not subordinate nor subject to notice and knowledge of the proceedings for compensation before the Collector. The giving of notice to a person interested is not without any consequence. It is not an empty ritual. It is intended to protect the interest of such person interested; it is intended to preserve the principles of audi alteram partem. The protection of such right can be fulfilled only with the right to object to the determination of the compensation upon being so noticed. When the statute requires a notice of reference without any specific provisions excluding the person interested having

knowledge of the proceedings, the knowledge of the proceedings before the Collector would not supersede the provisions of Section 20 of the Land Acquisition Act. It is not contended that the CMDA had knowledge of the proceedings of reference before the Court. The knowledge of the proceedings of the Collector is different from the knowledge of the person of a reference before a Court. The appearance of the Collector and raising of no objection by it would not preclude the right of the beneficiary having an interest independent of the Collector. It was so held in Abdul Rasak (supra) and in Agra Development Authority (supra).

11.2. Therefore, the knowledge of the CMDA about the proceedings for compensation before the Collector would not disentitle the CMDA from the notice of reference. Neither it would denude its right to object to the determination of compensation on reference, if the judgment is passed on the basis of similar case in the same acquisition proceedings earlier and that the decisions in those cases have not been challenged by the CMDA. In *Yadu Nandan Garg v. State of Rajasthan* (1961) 1 SCC 334, the Apex Court had held that invidious discrimination would not clothe others to get the same benefit nor Article 14 could be pressed into service. Omission to objection in one case would not entitle the claimant to invoke Article 14 to disentitle the beneficiary from objecting in another case. The right to objection by the beneficiary would not offend the right of the claimant guaranteed under Article 19(1)(f) or 300A of the Constitution of India. Such rights are always subject to the provisions of law relating to enactments falling within Article 31A. Such rights are not absolute. Neither they are irrespective of interest or rights of others recognised statutorily. Therefore, though the decision might be based on earlier orders or judgments passed in similar cases in the same acquisition proceedings yet it would not take away the right of the beneficiary to challenge the determination of compensation or to the notice of reference even though it had not challenged the earlier judgments, and such right is independent of the knowledge or notice of the proceedings for compensation before the Collector.

Whether the writ petition is maintainable?:

12. Mr. Mukherjee contended that the writ petition is not maintainable. The first ground he has taken is the ground of alternative remedy viz. the appeal as provided in Section 9 of the 1948 Act. The second ground he has taken is that when the matter stands finally concluded, the same cannot be reopened. He referred to page 21 of the paper book and pointed that the CMDA was informed of the final conclusion. But the fact remains that the writ petition was affirmed on 24th of June 1988 and was moved on 30th June 1988 whereas the State Government's appeal was filed thereafter and the appeal by the State Government was dismissed on the ground of delay. Therefore, the award became final and now it cannot be reopened. Once the writ is moved earlier than the dismissal of the appeal or the preference of the appeal and question of appealability would not affect the entertainability or maintainability of the writ

petition. The decision on A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, (paras 8 to 10) and Union of India and others Vs. Special Tehsildar (ZA) and others, (para-10) would not help us in the facts and circumstances of the case. It is only after a decision becomes final, the same cannot be reopened. In this case, before the appeal was filed and before the appeal was dismissed the writ petition having been moved it cannot be said that the matter had become final.

12.1. The decision in Municipal Council, Jalna v. State of Maharashtra and Ors. 2003(1) ICC 723 (Bom) referred to by Mr. Banerjee would not help him in the present case in view of the distinguishing feature. Inasmuch as the Bombay High Court proceeded on the basis that Section 20 of the Land Acquisition Act never contemplated notice upon the beneficiary until the decision in Gyan Devi (supra) which is prospective in its application and that the case having reached finality could not be reviewed. Whereas in this case, the writ petition was filed before the appeal by the State was dismissed on the ground of delay viz., before the award on reference could be said to have reached finality. The prospectivity would apply only in cases reaching finality.

12.2. However, it can be said that it was still open to the CMDA to prefer appeal. The CMDA with the leave of the Court, could have presented an appeal. Appeal is admittedly an alternative remedy. An appeal is a complete remedy and seems to be more efficacious. But, this question is to be treated on the basis of the facts. Here, the ground on which writ petition is moved is that notices were not given and the right of the CMDA was denied. Admittedly, absence of notice and denial of right to a person interested make a decision on the reference infirm. If this infirmity is challenged, the same cannot be overlooked. Admittedly, no evidence was adduced and the judgment was purported to have been delivered on the basis of the earlier judgments passed in the same proceedings. Therefore, the appeal would be illusory and would have been subject to Order 41, Rule 27 of the Code of Civil Procedure. That might have led the Court to remand the case, the relief the Court could have granted if an appeal was preferred.

12.3. At the same time, the Apex Court did not rule out the maintainability of the writ petition in such a situation. In the decision in Neelagangabai and another Vs. State of Karnataka and others, , the Apex Court held that a writ petition is very much maintainable in succession a situation. This view was reiterated in U.P Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc., . In the circumstances, we cannot throw out the writ petition on the ground that it is not maintainable because of the two grounds taken by Mr. Mukherjee. We, therefore, hold that the writ petition is very much maintainable.

12.4. Mr. Mukherjee contended that the 1948 Act cannot be invoked except in case of urgency. To support his contention, he relied on Smt. Sushila Devi and Ors. v. State of West Bengal and Ors. 1989(2) CHN 232 by Mr. Paritosh Kumar Mukherjee, J. (as His Lordship then was) and Sandeep Kumar Bhakat and Ors. v. State of West Bengal and Ors. 1992(2) CLJ 267 by Mrs. R. Pal, J. (as His

Lordship then was) and *Samarendra Nath Pal v. Collector, Hooghly* and Ors. 1997(1) CLJ 370 by Mr. S.B. Sinha, J. (as His Lordship then was). The principles laid down therein are not in dispute. Since the very requisition or acquisition was not under challenge before us, we are not supposed to go into that question except for the purpose of its reference with regard to the applicability of the provisions of the Land Acquisition Act in relation to the question at issue, namely the right to notice of reference and right to object to the determination of compensation by the beneficiary. This we have already dealt with earlier in this judgment. To avoid prolixity or repetition, we need no elaboration thereof. Mr. Mukherjee had also relied on the report of Setalbad Commission on Law of Acquisition, 10th Report, on the basis whereof Section 17 of the Land Acquisition Act amended in 1984. He also referred to paragraphs 17 and 18 of the Report and Appendix V. We however appreciate the attempt of Mr. Mukherjee to refer to this report and also to the footnote of the Law of Land Acquisition by S.C. Ghosh (1984 Edition) at page 1177 u/s 7 of the Land Acquisition Act where it is pointed out that the scheme of the 1948 Act and the Land Acquisition Act are different. Definitely, these two Acts are different. While the Land Acquisition Act is a general Act for acquisition of land, the 1948 Act is a special Act in order to entitle the State for speedy acquisition for particular purposes in case of urgency. The difference in the scheme on the system and procedure of acquisition would not prevail upon the determination of compensation or a reference when by reason of legislation by incorporation of some of the provisions of the Land Acquisition Act u/s 8(2) of the 1948 Act, the scheme for determination of compensation has been brought *pari materia* at par, as we have already held earlier.

12.5. The recommendation of the Setalbad Commission had in fact suggested to consolidate the provisions for acquisition so as to remove the differences and that certain modifications have already been made. The Courts have also taken a view that despite absence of the provision for solatium in the other Act for acquisition the principle has been applied thereunder on the same line as are applicable in case of acquisition under the Land Acquisition Act. On the same analogy, we do not think that the scheme for determination of compensation can be shifted in relation to the 1948 Act from those of Land Acquisition Act simply on the basis of omission of Section 50 of the Land Acquisition Act in Section 8(2) of the 1948 Act. The view we have taken seems to find support from the recommendation of the Setalbad Commission, which has since been recognised by various decisions of the High Courts and the Apex Court.

12.6. That apart the omission to incorporate Section 50 of Land Acquisition Act in Section 8(2) of the 1948 Act has to be looked into and examined in the context of the question we are dealing with. It provides that the cost of acquisition is to be borne out of the fund controlled by the local authority. In this case the cost is borne by the CMDA, a local authority. In Sub-section (2), it provides that such local authority may contest the determination of compensation but shall not be entitled to seek reference. Section 50 Land Acquisition Act recognises the right of the local authority as person interested in a reference which right is existent

even without Section 50 Land Acquisition Act by reason of Section 20 of that Act. But it curtails the right to seek reference by the local authority. In the absence of Section 50 Land Acquisition Act the provisions of Section 8(1)(a) of the 1948 Act entitles any person interested being aggrieved by the award to seek reference. By reason of Section 8(1)(b) thereof in case of disagreement between the Collector and any person interested in the compensation, the Collector may make a reference.

12.7. Having regard to the scheme of Section 8(1) of the 1948 Act, it seems that if the local authority is in disagreement with the Collector in respect of the compensation payable u/s 7(1), in that event, the Collector is bound to make a reference. If on account of disagreement between the Collector and the person interested, which includes the local authority, a reference is permissible, then such person interested is definitely entitled to contest the reference. It is not by virtue of Section 50 that person interested acquires the right to contest. This right is inherent in the person interested. Such person interested may claim interest in the compensation on account of it is being the recipient or on account of it is being the payee of the compensation. The interest of the person interested has not been defined. Therefore, the interest of a person interested in the compensation is to be construed widely, which includes the interest of the person, who controls the fund out of which the compensation is payable.

12.8. That apart, the principles of Land Acquisition Act with regard to compensation having been incorporated in the 1948 Act even without incorporation of Section 50, in view of Section 20, the right of the local authority as person interested to contest the reference cannot be denied. The preference of the 1948 Act is resorted to for the sake of urgency to acquire the land, which does not take away the right of the local authority to contest the reference. We may rely upon the principles enunciated by the Apex Court in *P.C. Goswami v. Collector of Darrang* (supra).

12.9. It appears that under the West Bengal Town & Country (Planning & Development) Act, 1979 land is supposed to be acquired under Land Acquisition Act as contemplated u/s 43 thereof. But this proposition raised by Mr. Mukherjee would not help us in view of the fact that the land was requisitioned and sought to be acquired in 1973 when the CMDA was not governed by the 1979 Act but by the 1972 Act. Section 18 of the 1972 Act empowered acquisition of land in accordance with any law for the time being in force, which include both the Land Acquisition Act as the 1948 Act. Therefore, the reference to Section 24 of the Hooghly River Bridge Act, 1969 permitting acquisition under the Land Acquisition Act or under the 1948 Act would not help Mr. Mukherjee but would fortify the view we have taken in view of the fact that the 1972 Act included the provisions wider than Section 24 of the 1969 Act with added flexibility.

12.10. Mr. Das had distinguished the decision in *Union of India and others Vs. Special Tehsildar (ZA) and others*, . We are in agreement that the principle laid down therein does not apply in the present case. Inasmuch as in that case an

appeal was pending before the High Court in which it was open to apply for being impleaded as a party. In such a context, it was held that an independent writ petition for seeking impleadment in appeal would not lie. However, the contention that 40 bighas of land is involved in the present case and that in that case 10 bighas of land were involved is immaterial since in some other cases on the basis whereof the present award has been passed, the land was around 36 bighas. Therefore, no such differentiation could be made on these grounds. Mr. Das has also distinguished the decision in *Sandhya Mukhoti* 1977(2) CLJ 375 (supra) at page 380. In that case, it was held that the Land Acquisition Act could be applied for acquiring the land on behalf of the company, society, individual though not for public purpose. But this decision does not help Mr. Mukherjee. Inasmuch as in this case the land was acquired for public purpose on behalf of a local authority, which is otherwise permissible under the 1972 Act and as such the principle of Land Acquisition Act if borrowed would not be inconsistent with the scheme of the 1948 Act. Mr. Das also distinguished the decision in *Smt. Sushila Devi Fomra v. State of West Bengal* 1980(2) CLJ 19. In this decision, the land was sought to be acquired for the State Transport Corporation for the purpose of the Corporation itself, a purpose distinct from the purpose of the State itself. Whereas, in the present case, the land is acquired for a public purpose of development in which the State itself was interested. The land was not required for the purpose of the CMDA itself. That apart the 1972 Act permits acquisition of land required by the CMDA for carrying out its functions under the 1972 Act being deemed to be needed for a public purpose in respect whereof land can be acquired by the State Government in accordance with any law for the time being in force by reason of Section 18 of the 1972 Act, due to which the application of the 1948 Act cannot be excluded. In the said decision, principles similar to those emanating from Section 18 of the 1972 Act was not under consideration and the Court had no occasion to lay down a straight-jacket formula in the said decision to foreclose the scope of Section 18 of the 1972 Act.

Conclusion:

13. For all the foregoing reasons, we hold that (1) the writ petition is maintainable; (2) that the CMDA is entitled to notice of reference; (3) it has a right to object to the determination of the compensation; (4) absence of notice of reference on the CMDA has the effect of denying its right to object to the determination of compensation; (5) such denial of right has the effect of rendering the award on reference not binding on the CMDA; (6) in such a case CMDA has two remedies open to i.e. (a) to prefer appeal u/s 9 of the 1948 Act with leave of the Court or (b) to invoke Article 226 on the principles on which it can be resorted to.

13.1. In the circumstances, we could have set aside the award of the reference Court. But for the passage of time, in between, we do not think that further delay would suit the ends of justice. That apart, Mr. Das in his usual fairness on instruction, had contended that his client would have no objection if the

compensation is paid at the rate of Rs. 5,000.00 per cottah.

Order:

14. In the circumstances, we direct that (1) the award passed on reference by the Court shall remain in abeyance until and subject to the fresh decision given by the Court in the reference after giving opportunity to the parties in accordance with law; (2) keeping the award in abeyance as above, we remit the reference to the Court below for a fresh decision after giving opportunity to the parties in accordance with law. Both the parties shall submit to the Court below a copy of the operative part of this order and no further notice would be issued to either of the parties; (3) on the basis of the copy of the operative part of this order or communication thereof the Court shall fix the date of hearing; (4) no adjournment shall be allowed to any of the parties; (5) the Court shall undertake the hearing on day-to-day basis and (6) shall positively dispose of the same within a period of three months from the date of the communication of the operative part of this order; (7) the Court shall decide the question in accordance with law according to its own wisdom and discretion without being influenced by any observation made in this order and all points are kept open; (8) the award kept in abeyance shall stand modified to the extent of the fresh decision given by the Court in terms of this order and shall be so effective with effect from the date of the decision of the reference Court; (9) the compensation payable, if any, under the award shall be paid by the CMDA to the respondents/claimants within three months from the date of the fresh decision/award, unless already deposited in whole or part, as the case may be.

14.1. Any amount or benefit of the said award received by the claimants in terms of any interim order passed by this Court or otherwise shall be allowed to be retained by the claimants/ respondents. The Court shall not decide any amount less than the figure agreed by the appellant in Court through Mr. Das viz. Rs. 10,000.00 (Ten thousand) per cottah. The Court shall determine whether any amount in addition thereto could be awarded on the basis of the materials before it after giving opportunity to the parties. Any amount deposited by the appellant in Court shall remain invested in interest earning account until the fresh decision and shall be released to the party entitled in terms of such decision with the interest, if any, accrued thereon. In case any amount is received by the claimant/respondent in excess of the award, the same shall be refunded with interest @ 6% per annum within 3 months of the fresh decision. If any amount is found due and payable to the claimant, the same shall carry all the elements of compensation, additional compensation, interest etc. contemplated under the Land Acquisition Act till the date of payment or deposit, as the case may be.

14.2. However, we make it clear that the Court shall determine this question in accordance with law and according to its own wisdom and discretion on the basis of the materials placed before it. It may also take note of the fact that in the same proceedings, similar amount was awarded and that was not objected to by the CMDA or if there is a strong case to distinguish the award on the basis of the

situation of the land from the other cases since not been objected to by the CMDA. At the same time, the earlier decisions shall not be precedents or binding since not objected to or otherwise. It will be open to the Court to take its own decision accordingly by taking into account the said factors as well. It may deviate if the CMDA is able to prove that these particular lands were different and law valuable than those lands on the basis of the award whereof the present judgment was delivered.

14.3. The appeal thus stands allowed. There will, however, be no order as to costs.

14.4. Xerox plain copy of the operative part of this order be given to both the parties on which the learned Court below shall proceed. The learned District Judge shall see that the matter is assigned to a Judge or to himself so that the matter is disposed of within a period of three months.

Later: (13th December, 2004)

The claimant has withdrawn 50% of the award namely at the rate of Rs. 5,000/- per cottah. the claimants shall be entitled to appropriate the said amount without prejudice to their rights and contentions in the reference to be decided in terms of this order. The reference is an open reference. The balance amount deposited with the learned Registrar General shall be invested in some interest earning account in the United Bank of India, High Court Branch, if not already deposited, and the interest accrued thereon shall be subject to the result of the fresh decision in the reference and the claimants shall be entitled to release of the said amount as decided in the reference within a month from the date of such fresh decision. In case the amount payable is in excess of the amount already deposited, the CMDA/KMDA shall deposit such excess amount within three months from the said decision and such amount shall be released to the claimant within two months thereafter.

Let this part of the order be incorporated in the order dated 13th December, 2004.

Rajendra Nath Sinha, J.

15. I agree.