
(2002) 10 CAL CK 0004
In the Calcutta High Court
Case No : F.M.A.T. No. 6 of 1997

First Land Acquisition Collector and Others	APPELLANT
Vs	
Daulat Singh Surana and Others	RESPONDENT

Date of Decision : 10-10-2002

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 4(1), 6, 9(3B)
West Bengal Land (Requisition and Acquisition) Act, 1948 — Section 5(3), 7A

Citation : (2003) 2 CHN 376 : (2003) 1 ILR (Cal) 325

Hon'ble Judges : Ashok Kumar Mathur, C.J.; Jayanta Kumar Biswas, J

Bench : Division Bench

Advocate : Alok Kr. Biswas and Atashi Gupta, for Police authorities., Bikash Ranjan Bhattacharjee, Dipankar Dutta, for the Appellant; Saktinath Mukherjee, Jayanta Mitra, Samar Banerjee, Swapan Kr. Dutta, for the Respondent

Final Decision : Allowed

Judgement

Jayanta Kumar Biswas, J.—This is an appeal against the judgment and order dated 2nd December, 1996, passed by a learned single Judge on the respondents' writ petition, which had been registered in this court as Civil Order No. 13522 (W) of 1995.

2. By the impugned judgment and order, the notification u/s 4 dated 13th December, 1994, and the declaration u/s 6 dated 23rd June, 1995, published and made by the Government of West Bengal, under the Land Acquisition Act, 1894 (in short "the Act 1 of 1894"), in respect of a piece of land, comprising the western portion of premises No. 4, Pretoria Street, Calcutta and measuring more or less 0.0988 hectare (0.2423 acre), were set aside; with a direction upon the appellants to give back possession of the said land to the respondents.

3. The reasons for setting aside the Section 4 notification were: the publication thereof, having not been preceded by handing over vacant possession of the land, by the Government to the respondents, in compliance with the order dated 18th August, 1993, passed by N.K. Mitra, J (as he then, was) on the

respondents" writ petition (Matter No. 3799 of 1992), had amounted to practising fraud by the Government upon the statute. The declaration u/s 6 was set aside on the ground that the statement made therein: "partly at the public expenses and partly at the expense of within the aforesaid ward": indicated total non-application of mind by the concerned authorities.

4. In the year 1943, under the Defence of India Rules, the land at 4, Pretoria Street, Calcutta, was requisitioned by the Government of West Bengal. After such requisition, the Government started using the ground floor of the two-storied building, standing thereon, as office of the Deputy Commissioner of police (Security Control), and the first floor thereof, as residential quarters of the said officer. On 28th December, 1947 the Government de-requisitioned, the said land, but retained possession thereof. Again, by an order dated 30th January, 1959, issued u/s 3(1) of the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947, the Government requisitioned the said land, and continued to use the same for the purpose, for which it was being used from the year 1943. In the year 1982 the respondents purchased the said land.

5. After purchasing the said land with the existing building, challenging the said requisition order date 30th January, 1959, in the year 1984 the respondents filed a writ petition (Matter No. 872 of 1984) in this Court. It was disposed of by a learned single Judge by judgment and order dated 17th September, 1985; against which the Government preferred an appeal (F.M.A No. 508 of 1985). The said appeal was disposed of by a Division Bench by judgment and order dated 12th December, 1985. The result of the said litigation was: in the absence of steps taken by the Government for acquisition of the covered area in the meanwhile, the requisition thereof was to remain valid for six months from 12th December, 1985; and the requisition in regard to the garden was put to an end, with a direction to hand over the possession thereof to the respondents, and liberty to acquire at the same time.

6. Consequently, apprehending acquisition of the said land under provisions of the West Bengal Land (Requisition and Acquisition) Act, 1948 (in short "the W.B. Act 2 of 1948), on 25th April, 1986 the respondents moved the second writ petition [Civil Rule No. 5025(W) of 1986]; several restraint orders were passed in that case.

7. However, the Government once again requisitioned the said land by making an order dated 31st May, 1986 u/s 3(1) of the W.B. Act 2 of 1948. The Government continued to use the said requisitioned land(measuring more or less 0.2542 hectare) for the same purpose, as before. Thereafter, for acquiring the said land, the Government published on 16th August, 1986, in the Official Gazette, the notice dated 14th August, 1986 u/s 4(1a) of the W.B. Act 2 of 1948.

8. It appears, the respondents challenged the said order and notice, made and published, under Sections 3 and 4 (1a) of the W.B. Act 2 of 1948 by filing the third writ petition (Civil Rule No. 8407(W) of 1987]. By a judgment and order

dated 15th July, 1987, a learned single Judge disposed of the said Civil Rule No. 8407 (W) of 1987; both the said order u/s 3 and notice u/s 4 (1a) were set aside. Being aggrieved, the Government preferred an appeal (F.M.A.T. No. 2224 of 1987); it was disposed of by a Division Bench by judgment and order dated 7th September, 1990, (reported in State of West Bengal and others Vs. Daulat Singh Surana and others,). The Division Bench held as under:--

"It however appears to us that if the vacant land to the extent of 15 feet at the back side of the covered portion of the building is acquired the purpose for which the building is intended to be acquired will be satisfied and the entirety of the vacant land and the back side of the said building is not necessary to be acquired. The order of acquisition of vacant land at the back of the building beyond 15ft. therefore cannot be held just land proper and the order of acquisition beyond 15ft, of the vacant land at the back side of the building therefore stands annulled. It also appears to us that in the facts of this case that the State Government intended from the very beginning to acquire the premises for the said Security Control Department and for accommodating the in charge of the said department viz. the Deputy Commissioner of police (Security Control). It was never intended by the State Government to requisition the premises temporarily for the sole purpose of requisition. It will not be correct to contend that the Government had intended initially to keep the premises in requisition but later on, it decided to acquire the said premises. Records of the Government Department also clearly demonstrate that the property was intended to be acquired for the said purpose and as the time for acquisition as specified by the Court of Appeal was running out and there was urgent necessity to maintain status quo as regards possession before acquisition proceeding is finalized under W. B. Act 2 of 1948, the order of requisition was made within six months only as a step in aid to pass consequential order of acquisition u/s 4(1a) of W. B. Act 2 of 1948. Looking to the relevant records of the case it does not appear to us that the order of requisition was not passed within a period of six months but such order was anti dated.

We, therefore, allow this appeal and set aside the judgment appealed from to the extent indicated above. Let all consequential steps in connection with the acquisition of the said premises be taken without any further delay."

On 25th April, 1991, the Government's application for special leave to appeal, against the said judgment and order of the Division Bench, was dismissed by the Supreme Court.

9. Consequently, on 12th June, 1991, physical possession of the land beyond 15ft. of the existing building was delivered back by the Government to the respondents. Thereupon, a notice dated 14th September, 1992, u/s 5(3) of the W.B. Act 2 of 1948, was given by the First Land Acquisition Collector, Calcutta, inviting the respondents to make their respective claims to compensation for the said land, already acquired by the Government by publishing the said notice dated 14th August, 1986 u/s 4(1a) of the W.B. Act 2 of 1948.

10. Instead of making claims to compensation, the respondents simultaneously filed the fourth and the fifth writ petitions (Matters No. 3798-3799 of 1992). In the writ petition registered as Matter No. 3798 of 1992, the respondents, inter alia, challenged the said notice dated 14th September, 1992 given u/s 5(3); while in the other (Matter No. 3799 of 1992) the respondents prayed for fixation of rent compensation for the Government's possessing the land. By two separate ex parte orders, both dated 18th August, 1993, the said two writ petitions (the fourth and the fifth ones) were disposed of by N.K. Mitra, J(as he then was). By the order passed in Matter No. 3798 of 1992, the notice dated 14th September, 1992 u/s 5(3) of the W.B. Act 2 of 1948 was set aside on the ground that, in spite of the Division Bench judgment in F.M.A.T. No. 2224 of 1987, the said notice had been issued in respect of the entire land. By the other order, passed in Matter No. 3799 of 1992, the requisition order dated 30th January, 1959 was set aside, together with a direction to the Government to deliver back the possession of the land building to the respondents within 6 months. It appears that by a subsequent order dated 8th July, 1994, passed in said Matter No. 3798 of 1992, the learned Judge was pleased to modify his earlier order dated 18th August, 1993, to the effect that his said earlier order would not prevent the Government from issuing fresh notice in terms of the orders of the court, if there were any, for acquisition of the land within the period of 6 months.

11. In the backdrop of the aforesaid facts and circumstances, the Government, on 21st December, 1994 published in the Official Gazette, the notification dated 13th December, 1994 u/s 4 of the Act 1 of 1894. It was stated that for a public purpose (same purpose for which it was being used from the year 1943) the land (the covered area with 15ft. as upheld by the Division Bench in F.M.A.T. No. 2224 of 1987) at the said premises was needed by the Government at the public expense. The respondents duly filed their objections; hearing of the objections, by the competent authority, in terms of section 5A of the Act 1 of 1894, took place on 21st March, 1995. Thereafter, a declaration u/s 6 of the Act 1 of 1894 was made by the competent authority on 23rd June, 1995; it was published in the newspapers on 6th & 7th July, 1995, and in the Official Gazette on 7th August, 1995.

12. At the abovementioned stage, the sixth writ petition, dated 2nd August, 1995, came to be filed by the respondents. This is the writ petition, on which the judgment and order impugned in the present appeal was passed. It was filed challenging the said notification dated 13th December, 1994 published u/s 4 of the Act 1 of 1894. Subsequently, by amendment of the writ petition the declaration dated 23rd June, 1995 made u/s 6, was also challenged. The case made out in the writ petition was :--

The notification u/s 4 of the Act 1 of 1894 could not have been validly issued in respect of the land, possession whereof had been kept by the Government illegally. The Government had earlier been continuing possession of the land, only in terms of the requisition order dated 31st May, 1986; the said order of

requisition having been quashed by the Court's order dated 18th August, 1993, the Government's possession of the land, sought to be acquired, became illegal and unauthorized. Having abandoned the proceeding, earlier initiated under the W.B. Act 2 of 1948, as was evident from the fact of publication of the impugned notification u/s 4 of the Act 1 of 1894, the Government had lost right to retain possession of the land; for, possession would have been taken, only in terms of provisions of Section 16 of the Act 1 of 1894. The very fact of the Government's publishing the notification u/s 4, while retaining illegal possession of the land, was sufficient to hold that the power was exercised mala fide.

13. The appellants contested the said writ petition by filing an affidavit-in-opposition. Their case was to the following effect:--

In terms of liberty granted to the Government by the order dated 8th July, 1994, passed by N.K. Mitra, J(as he then was) in Matter No. 3798 of 1992 the notification u/s 4 of the Act 1 of 1894 had been published. The Matter No. 3799 of 1992 was still pending for hearing. As the acquisition proceeding under the Act 1 of 1894 had been initiated pursuant to liberty granted by the order dated 8th July, 1994, the same could not be said to be invalid.

14. By filing an affidavit-in-reply, the respondents, besides stating that Matter No. 3799 of 1992 had already been disposed of by an order dated 18th August, 1993, contended that by the said order dated 8th July, 1994, the respondents' right to challenge the validity of the acquisition proceeding had also been kept reserved.

15. With the aforesaid materials on record, the learned single Judge decided the issues in the said writ petition by the impugned judgment and order. The findings of the learned single Judge were to the following effect:--

Possession of the land could be taken by the Government, only after passing of an award under the provisions of the Act 1 of 1894. Apart from the admitted fact that no award was passed, the possession of the land had been kept by the Government, even after the order of its de-requisition. Possession of the land had not been handed over to the respondents, in spite of the Court's order dated 18th August, 1993, passed by N.K. Mitra, J(as he then was) in Matter No. 3799 of 1992. The non-delivery of possession of the land, had vitiated the notification u/s 4 of the Act 1 of 1894, so as to make it a nullity; for, in view of the well settled principle, any action taken or anything done in violation of an order of the court, is a nullity. The Government had been granted liberty to acquire the land in accordance with law, but that liberty was subject to the Government's handing over, first, the de-requisitioned land to the respondents. The publication of the notification u/s 4 of the Act 1 of 1894, without, first, delivering back the possession of the land to the respondents, in terms of the court's order passed in Matter No. 3799 of 1992, had amounted to practising fraud by the Government upon the statute. The declaration dated 23rd June, 1995, made u/s 6 of the Act 1 of 1894, was vitiated by total non-application of mind, as the

statement made therein regarding the expenses of acquisition, was vague and lacking in material particulars.

16. Before us, it has been contended on behalf of the appellants that since by the order dated 8th July, 1994, passed in Matter No. 3798 of 1992, the Government had been granted liberty to take steps for acquisition of the land, and the notification u/s 4 of the Act 1 of 1894 was issued pursuant to such liberty, there was no scope and reason for the Government to give back possession of the land to the respondents: as a condition precedent to the initiation of the acquisition proceeding. As regards the declaration u/s 6, it has been contended that the learned single Judge should not have decided the question of its validity by relying on a printing mistake appearing in the declaration, which had been published in the newspaper; because, the purported vagueness indicated by the learned single Judge, was not an existing and real one, as was apparent from the notification itself and the declaration published in the Official Gazette. The learned counsel for the appellant, by referring to the decisions in the cases of Nripati Ghoshal, First Land Acquisition Collector and others, etc. Vs. Pramavati Kapur (Dead) by LRs. and others, ; and First Land Acquisition Collector and Others Vs. Nirodhi Prakash Gangoli and Another, ; has contended that the Government has the power to initiate an acquisition proceeding, by publishing a notification u/s 4 of the Act 1 of 1894, also in respect of any land, which is in the Government's possession; and therefore, the notification published in the instant case, cannot be faulted with, on the grounds as contended by the respondents.

17. On the other hand, the learned counsel for the respondents has contended, before us, that the delivery of possession of the land, in the facts and circumstances of the present case, was a sine qua non for publishing the Section 4 notification. According to him, because of the order dated 18th August, 1993, the liberty granted to the Government to acquire the land, had stood conditioned with the requirement of prior delivery of possession of the land by the Government to the respondents. On the question of requirement of delivery of possession, the learned counsel for the respondents has placed reliance on the decisions in the cases of Raghunath and Others Vs. State of Maharashtra and Others, ; Hindustan Oil Mills Ltd. and Another Vs. Special Deputy Collector (Land Acquisition), ; State of West Bengal v. Bireshwar Dutta Estate (P) Ltd., [(2000) 1 CLT 165 (HC) (para 37)1; and an unreported decision of the Supreme Court in the case of Kumar Majaji and Ors. v. Commissioner of police, Lal Bazar Street, Calcutta and Ors., [Civil Appeal No. 1433 of 1999 decided on 12th March, 1999]. On the question of effect of a judgment, he has relied on the decision in the case of Raja Sri Sailendra Narayan Bhanja Deo Vs. The State of Orissa, . Relying on Sailendra Narayan Bhanja's case he has contended that the Court's order dated 18th August, 1993, passed in Matter No. 3799 of 1992, was an effective estoppel between the appellants and the respondents; and accordingly, the Government was absolutely incompetent to initiate any proceeding for acquisition of the land, without, first, giving back possession thereof to the respondents. He has placed

reliance on the decisions in the cases of *Ideal Sunrise Properties Pvt. Ltd. and Anr. v. State of West Bengal and Ors.*, [unreported; W.P.No. 23477 (W) of 1997, decided on 10th November, 1998]; and *Lila Deb Chowdhury and Ors. v. State of West Bengal and Ors.*, [2002 WBLR (Cal) 264]; for contending that the acquisition notice u/s 4(1a) of the W.B. Act 2 of 1948 having come to an end,-- first, for not passing the award within the period fixed by Section 7A thereof, and secondly, for the appellants" choosing to proceed under the Act 1 of 1894, which does not provide for requisition,--the Government's retention of unauthorized possession of the land, incurably vitiated the Section 4 notification.

18. After hearing the parties, and considering the materials on record and the position of law, we are of the considered view that the impugned judgment and order, passed by the learned single Judge, cannot be sustained. We are of such view, for the reasons recorded by us hereinafter.

19. We find that the fact of the Government's possession of the land, at the time of publishing the notification u/s 4 of the Act 1 of 1894, was the sole reason for challenging the validity of the said notification; and the learned single Judge set aside the notification upholding respondents" such challenge only. In our opinion, for the purpose of examining the validity of a notification u/s 4 of the Act 1 of 1894, the question of possession of the land is absolutely irrelevant; the examination should remain confined, only to the question of existence of the public purpose. While we find support for our such view from the recent Apex Court decision in *Nirodhi Prakash's case*(supra), we do not find any contrary proposition, in any of the decisions cited by the learned counsel for the respondents. In the present case, neither the respondents had raised a real contention that behind the proposed acquisition the public purpose was absolutely absent; nor did the learned single Judge reach a conclusion that the proposed acquisition was not for the notified public purpose. u/s 4 of the Act 1 of 1894, the Government is empowered to take steps for acquisition of any land, in any locality, if the same is needed for a public purpose. We find no reason to read the word "land" mentioned in Section 4 of the Act 1 of 1894, as "land not in the possession of the Government." In the absence of any specific statutory bar, we find no reason to hold that the Government is not empowered to publish a notification under said Section 4, in respect of a piece of land, which is already in the Government's possession. In our view, the impugned judgment and order is liable to be set aside, on this ground alone.

20. The learned single Judge held that the publication of the Section 4 notification, being an act done by the Government in violation of the Court's order dated 18th August, 1993, passed by N.K. Mitra, J (as he then was) on the respondents" writ petition (Matter No. 3799 of 1992), --was a nullity. Before us, the learned counsel for the respondents, by relying on the decision in *Sailendra Narayan Bhanja's case* (supra), has contended that the said order dated 18th August, 1993 had cast an inescapable binding obligation on the Government to give back possession of the land to the respondents, before taking any steps for

acquiring the same.

21. The said ex parte order dated 18th August, 1993, passed by N.K. Mitra, J(as he then was), on the respondents" writ petition(Matter No. 3799 of 1992), reads as under:--

"Heard Mr. Banerjee for the petitioner. None appears for the respondents. No affidavit-in-opposition has been filed controverting the statements made in the writ application which thus remain uncontroverted.

From paragraph 6 of the writ application, it appears, that pursuant to the requisition order made on 30th January, 1959, rent compensation was fixed at Rs. 777/- per month for the construction standing on the disputed land, but no rent compensation was assessed so far as the vacant land pertaining to the disputed premises is concerned. Since the disputed property has been kept under requisition for more than 25 years, the same cannot be sustained in law, in view of the settled principles of law as declared by the Supreme Court and also in view of the statutory provisions and as such the impugned requisition order stands set aside. The authority concerned, however, is directed to assess the rent compensation for the vacant portion of the land pertaining to the disputed premises from the date of requisition till date, within 4 months from the date of communication of this order to the authority concerned and to pay the same to the writ petitioner within 4 months thereafter positively and the time limits so fixed above are pre-emptory and mandatory. The respondents are also directed to deliver back the possession of the disputed land and the building to the petitioner positively within a period of 6 months from date and the time limit so fixed above is also pre-emptory and mandatory.

The writ application stands allowed. There will be no order as to costs. The parties to act on the signed xerox copy of this order on usual undertakings."

22. It is apparent on the face of the said order dated 18th August, 1993 that at the time of passing the same, the attention of the learned Judge, was neither drawn to the binding Division Bench judgment dated 7th September, 1990, passed in F.M.A.T. No. 2224 of 1987; nor to the provisions of Section 4(2) of the W.B. Act 2 of 1948. It appears, in ignorance of the said binding decision of the Division Bench, which had already upheld the acquisition of the land(covered area and vacant land up to 15ft. at the back of the building), made by the Government by notice dated 14th August, 1986 u/s 4(1a) of the W. B. Act 2 of 1948, N. K. Mitra, J (as he then was) set aside the non-existing requisition order dated 30th January, 1959; and directed consequential delivery of possession of the entire land to the respondents. His attention, it appears, was also not drawn to the provisions of Section 4(2) of the W.B. Act 2 of 1948: in terms whereof, the building and vacant land at the back of the building, to the extent of 15ft., situate at the premises in question, had stood absolutely vested in the State Government on and from 16th August, 1986, on which date the notice dated 14th August, 1986, u/s 4(1a) of the W.B. Act 2 of 1948, was published in the

Official Gazette. Thus, it is clear that N.K. Mitra, J (as he then was), had passed the said order dated 18th August, 1993, in ignorance of both the said statutory provision and the binding Division Bench judgment. The effect was ; the said order dated 18th August, 1993 was per incuriam.

23. The question, before use, is: what was the effect of the said order dated 18th August, 1993 on the said notification dated 13th December, 1994 published by the Government u/s 4 of the Act 1 of 1894? In our considered view, the learned single Judge was wrong in holding that the publication of the said notification u/s 4, was an act done, in violation of the said order dated 18th August, 1993. He also proceeded on a completely wrong premise that the land in question had been kept in possession by the Government, even after formally de-requisitioning the same; for, as a matter of fact, the piece sought to be acquired, had never been de-requisitioned after 30th January, 1959; it had rather stood absolutely vested in the Government.

24. By the said order dated 18th August, 1993, no condition had been put, to the effect that, before taking any further steps towards acquisition of the land in question, the State Government would be required to hand over the possession thereof, back to the respondents. We are unable to read the directions given by the said order, so as to discover a restriction, stated to be put thereby, on the exercise of statutory powers by the State Government, available u/s 4 of the Act 1 of 1894. If the State Government did not comply with the directions contained in the said order, by not delivering back possession of the building and its adjoining land to the respondents, that would have been a matter of violation of the directions contained in the said order; but it cannot be stretched to the extent of saying that an action, taken by the State Government in due exercise of its statutory powers, would also become a nullity for the same reason. The principle of estoppel by judgment, as relied on by the learned counsel for the respondents, has no manner of application, in the facts and circumstances of the present case. In view of insertion of section 9(3B) in the Act 1 of 1894, with effect from 2nd May, 1997; by legal fiction created by Section 7A of the W.B. Act 2 of 1948, the Section 4(1a) notice was not to lapse; because, it had been saved by said section 9(3B), before 8th October, 1997, i.e. the date fixed by Section 7A for lapsing of the notice. So, the Governments" possession of the land, never became illegal or unauthorized by operation of law, as contended. In the Single Bench decisions cited, the aforesaid aspect was not considered. Those decisions, therefore, are of no help to the respondents. Accordingly, we are of the view that for not delivering back (in terms of the said order dated 18th August, 1993) the possession of the land, proposed to be acquired (rather re-acquired) by the notification dated 13th December, 1994 published u/s 4 of the Act 1 of 1894, the said notification could not be held to be a nullity.

25. The learned single Judge has held that the declaration dated 23rd June, 1995, made u/s 6 of the Act 1 of 1894, was vitiated by total non-application of mind by the competent authority. The ground was that the statement made in

the declaration regarding the expenses of acquisition was vague and lacking in material particulars, because the acquisition was sought to be made partly at the expenses of the State and partly by raising funds from within the ward.

26. From the declaration published on 7th August, 1995 in the Official Gazette, as has been produced before us, we find that the learned single Judge found fault with the declaration, because he relied on a printing mistake, which appeared in the copy of the declaration published in the newspaper. We are satisfied that the words "partly at the public expenses and partly at the expense of, which did not appear in the notice published in the Official Gazette, as well as in the Section 4 notification, appeared in the notice published in the newspaper by mistake only. Therefore, we find no infirmity, also in the declaration dated 23rd June, 1995, made u/s 6 of the Act 1 of 1894.

27. In view of our foregoing reasons, we hold that the present appeal must succeed; the impugned judgment and order is liable to be set aside; and the respondents' writ petition should be dismissed.

28. However, before parting with this judgment, we are required to advert to two applications, which were made by the respondents in the present appeal. In this appeal, initially, prayer for interim stay of operation of the impugned judgment and order, was refused. Against an order dated 26th September, 2000, directing the appellants to hand over possession of the building and land in question, the appellants moved the Supreme Court by Civil Appeal Nos. 2370-2371 of 2001. By an order dated 26th March, 2001 the said Civil Appeals were disposed of with a direction that status quo should be maintained till the disposal of the present appeal; their Lordships were also pleased to observe, "It is, however, open to the High Court to make interim order not inconsistent with this order made by us to the effect of protecting interests of the owners of the land." Consequently, an application dated 21st May, 2001 (C.A.N. No. 4592 of 2001) was filed, in this appeal, by the respondents, inter alia, praying for a direction upon the appellants to pay compensation or damages to the tune to Rs. 3,20,99,230/-, for the State Government's alleged illegal possession of the building and its adjoining land situate at the premises in question, from 1st June, 1986. Said application (C.A.N. No. 4592 of 2001) was disposed of by an order dated 20th June, 2001, whereby the Collector was directed to fix the rent compensation, with notice to the respondents; and then to pay such compensation. Thereafter for modification of the said order dated 20th June, 2001, the respondents made a fresh application dated 6th July, 2001 (C.A.N. No. 5886 of 2001). By an order dated 23rd July, 2001, the said C.A.N. No. 5886 of 2001 was disposed of, by setting aside the Collector's order dated 1st July, 2001, and giving a direction upon him, to determine the rent compensation, afresh, by passing a reasoned order after hearing the respondents. Against the said orders dated 20th June, 2001 and 23rd July, 2001, the respondents moved the Supreme Court by Civil Appeal Nos. 88-89 of 2002; they were disposed of by an order dated 8th January, 2002. Their Lordships were pleased to set aside the said order dated 23rd July, 2001 passed

by this Court on the said C.A.N. No. 5886 of 2001. Their Lordships were further pleased to direct this Court to dispose of the main appeal itself without further delay; directions were also given for passing fresh orders on the said C.A.N. No. 5886 of 2001.

29. It appears that by making the said applications, the respondents prayed for an order from this Court, in the pending appeal, for assessing the damages or the compensation payable by the State Government for wrongful occupation of the land (with building). The respondents contended that the State Government's occupation of the land had become wrongful, because by order dated 18th August, 1993, passed by N.K. Mitra, J(as he then was), on the respondents' writ petition (Matter No. 3798 of 1992), the acquisition of the building and the vacant land at the premises in question, as had been made by notice dated 14th August, 1986 issued u/s 4(1a) of the W.B. Act 2 of 1998, had been set aside.

30. The abovementioned very foundational fact pleaded by the respondents for the interim reliefs in the said applications, is totally incorrect; for, by the order dated 18th August, 1993, passed in Matter No. 3798 of 1993, N.K. Mitra, J(as he then was) had actually not, and rather could not (in view of the Division Bench judgment in F.M.A.T. No. 2224 of 1987), set aside the acquisition notice dated 14th August, 1986, published u/s 4(1a) of the W.B. Act 2 of 1948. We have already seen that there was an unbroken and continuous valid requisition, which had ultimately merged in the acquisition notice dated 14th August, 1986. Therefore, to whatever rent compensation or damages the respondents were entitled in law; they were always and still are, at liberty to claim and realize the same from the Government, in accordance with law. Regarding the propriety and necessity of the publication of the notification dated 13th December 1994, u/s 4 of the Act 1 of 1894, in the face of the Division Bench decision dated 7th September, 1990 in F.M.A.T. No. 2224 of 1987, we do not propose to express any opinion, lest we should allow the appellants to challenge their own action, to the inevitable detriment of valuable accrued right, if any, of the respondents. We only say that in view of our decision to allow the appeal, and uphold the Section 4 notification and consequent section 6 declaration, we do not think it proper or necessary to pass any further order on the respondents' said applications (C.A. Nos. 4592 and 5886 of 2001); and they shall be deemed to be disposed of, with liberty to the respondents to claim their dues, if any, before the appropriate forum, in accordance with law.

31. In the result, the appeal is allowed; and the impugned judgment and order dated 2nd December 1996 is set aside. The respondents' writ petition [C.O.No. 13522 (W) of 1995] is hereby dismissed. There will be no order as to

costs.

Ashok Kumar Mathur, C.J.

32. I agree.

Later:

If urgent xerox certified copy of this judgment and order is applied for the same may be made available to the learned counsel for the parties upon compliance with all the formalities.

Ashok Kumar Mathur, C.J., Jayanta Kr. Biswas, J.