
(1986) 05 CAL CK 0023
In the Calcutta High Court

Indian Fuel and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 22-05-1986

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g), 21, 300A, 31
Criminal Procedure Code, 1973 (CrPC) — Section 144, 144(2), 46(1), 52
West Bengal Land (Requisition and Acquisition) Act, 1948 — Section 2(7), 3, 3(1), 3(2), 4
West Bengal Land Reforms Act, 1955 — Section 3(1), 4(4)
West Bengal Non-Agricultural Tenancy Act, 1949 — Section 72
West Bengal Public Lands (Eviction of Unauthorised Occupants) Act, 1962 — Section 2(h)
West Bengal Town And Country (planning And Development) Act, 1979 — Section 46, 52, 53, 54

Citation : 91 CWN 167

Hon'ble Judges : B.P. Banerjee, J

Bench : Single Bench

Advocate : S.N. Mukherjee, P.K. Mallick, A.N. Mukherjee, Kusum Agarwal and Dipankar Basu, for the Appellant; Tapas Roy, Samaresh Banerjee and S. Patra for C.M.D.A., S.K. Acharya, Ld. Advocate General, Bikash Bhattacharya and S.K. Mukherjee for State and Haren Poyra, Special Officer, for the Respondent

Judgement

B.P. Banerjee, J.—The fact of the case is that the petitioner No. 1 is a registered partnership firm and was formed for carrying on business of manufacturing of coal briquets for domestic use. For the purpose of setting up of a factory for manufacturing of coal briquets, the petitioners purchased lands measuring about 68 cottahs in plot Nos. 6, 7, 12 and 13 in Khatian No. 1268 and 1787 in Mouja Bankra, Police Station Domjur in the District of Howrah from the Respondent No. 14 to 27 by registered deed. It was alleged in the writ petition that before the purchase of the property, the petitioner made a through search to ascertain whether the respondents Nos. 14 to 27 had a good marketable title and interest to sell the said lands. The petitioner also made enquiries in the office of the Additional Land Acquisition Collector, Howrah to ascertain whether there was an

order of requisition and/or acquisition in respect of the said lands and found that there was no such order of requisition and/or acquisition in respect of the said land. Further before purchasing the said property, the petitioners published a public notice in the leading daily Bengali newspaper Anandabazar Patrika on 16th February, 1985 whereby it was brought to the notice of the public that the petitioner had entered into agreement to purchase the said property and if anybody had any objection, he could intimate the petitioners within 7 days from the date of such notice. A copy of such public notice is marked as Annexure "E" to the writ petition. In the Revisional Settlement Record of rights, the names of the respondent Nos. 14 to 27 were duly recorded as raiyats. The Salap Gram Panchayat also certified that, there was no bargadar in the lands in question and that the said certificate was also countersigned by the Local Block Development Officer, Government of West Bengal. The property was purchased by five separate registered deeds of conveyance dated 13th May, 1985 respectively. It was also admitted that after the purchase of the said property, the petitioner duly paid the government revenue in respect of the lands in question which was duly accepted by the State of West Bengal in this behalf. The petitioner also paid Gram Panchayat tax to Bankra Gram Panchayat No. 2. Thereafter, the petitioner applied to the Directorate of Cottage and small Industries, Government of West Bengal for registering the factory of the petitioner as a small scale unit and the State Government after making necessary enquiries and on being satisfied, registered the petitioner firm and the factory as a small scale unit and granted a provisional certificate on 30th July, 1985. The petitioner submitted a plan before the Bankra Gram Panchayat No. 2, for sanction for construction of the factory on the plots of land and by the letter dated 8th august, 1985, the said Gram Panchayat duly sanctioned the said plan. After obtaining the sanctioned plan, the petitioner applied for loan for setting up of the said factory to the Syndicate Bank, Chittranjan Avenue Branch, Calcutta and the said Bank after making enquiry and inspection on the said proposed factory site sanctioned a sum of Rs. 8,60,000/- as loan against the security furnished by the petitioners by way of mortgage of the land, building and plant machinery of the petitioner's factory. It appears that after obtaining the sanctioned plan and the loan from the Bank, the petitioners constructed a factory on the said plots of land. It was also alleged that the petitioners installed thereon plants and machinery by spending a sum of Rupees 12 lakhs approximately. It was also alleged that the petitioners thereafter filed application for conversion of agricultural land to non-agricultural land before appropriate authority which, it is stated, is still pending. The petitioner also applied for supply of electricity before the State Electricity Board and that after completion of all the formalities, the petitioners decided to start the running of the production in the said factory from the second week of September, 1985 and for supply of power, the petitioners, it is stated, had already installed a generator at the said factory premises so that the factory might start functioning even before the supply of the electricity from the West Bengal State Electricity Board which might take sometime. It was alleged that on 31st of August, 1985, some persons claiming to be the officers of the Calcutta Metropolitan Development

Authority (referred to as C.M.D.A.), the respondent No. 2 herein came to the said factory premises of the petitioners and threatened, that they would take forcible possession of the said property and would demolish the said factory premises of the petitioner. It was also alleged that the said officers of the Calcutta Metropolitan Development Authority refused to disclose their authority to take such forcible possession of the said factory premises, on being threatened by the officers of the CMDA the petitioner immediately filed an application u/s 144(2) of the Code of Criminal Procedure before the Learned Executive Magistrate, Howrah which was registered as M.P. Case No. 1726/85 and that the Learned Executive Magistrate, Howrah passed an order to the extent that the petitioner's possession in respect of the land in question should not be disturbed. It was alleged that a copy of the order passed by the Executive Magistrate was served upon the Officer-in-Charge, Domjur Police Station, Howrah on 1st September, 1985, but the copy of the said petition and the order could not be served upon the CMDA and other Authorities as the said authorities refused to accept the same. It is alleged that inspite of the order of the Learned Executive Magistrate in this behalf and inspite of the service of the order of the Magistrate upon the Officer-in-Charge of Domjur Police Station, a large number of officers of the CMDA with police force numbering about 100 assembled at the said plots along with masons with all types of operators including gas cutters to demolish the said factory and started demolishing the said factory. It is alleged, immediately the petitioner rushed to the Superintendent of Police, Howrah and the demolition work was ultimately stopped. On 3rd of September, 1985 at first sitting of the Court, the instant writ application was moved before me and it was stated that the petitioners came to know that at the midnight of 2nd September, 1985 the said structures would be demolished by the CMDA and the Learned Advocate appearing for the petitioner sought to move the writ application in the very night at the residence of a Judge of this Court, but could not move and ultimately on the early morning of 3rd September, 1985, obtained permission from the seniormost Judge of this Court to move the said writ application at my residence. But they could not do so in the morning as I was out of my residence in the morning and ultimately moved before me on the first sitting of the Court on that date and it was alleged that the demolition work had already been started in the dead of night and was still continuing. Accordingly by the order dated 3rd September, 1985, an interim order of injunction was passed ex parte restraining the respondents from demolishing and/or removing any articles or goods from the premises in question and further the respondents were restrained from interfering with the peaceful possession and enjoyment of the property by the petitioner and Mr. Haren Poyra, learned Advocate of this Court was appointed a special officer to inspect the premisses in question and to take photographs, if necessary, and was directed to submit report by Friday next (i.e. by 6th of September, 1985).

2. On 6th of September, the special officer appointed in this behalf submitted a report wherein it was stated that as soon as the order was passed by this Court

at 10-55 A.M. on 3rd September, 1985, the Special Officer along with the Learned Advocate of the petitioner reached the factory premises situated at Domjur, District Howrah at 1-45 P.M. and saw that the entire construction and the concrete reinforcement columns including the boundary walls of the said factory had been completely destroyed and demolished. It is necessary to set out some portion of the report submitted by the said special Officer. In the said report it was inter alia stated that:

On the spot, I saw the boundary walls of the factory and the entire structure and most of the concrete reinforcement column had been demolished and the machine parts were strewned here and there all over the place. It appears as if heavy bombardment had been caused at the site. Destruction was made in such a fashion that the whole of the plant and machinery were brought to the ground and it appeared that they have purposely been damaged. Three sides of the said factory which appeared to have been surrounded by brick built boundary wall with concrete reinforcement pillars in between, were completely broken down and heaps of broken structures were lying on the ground. The main factory structures and the sheds where the broken machine and the debris of the demolished construction are lying is approximately 200sq. feet in area. It appears that it was a fully modernised factory. It was pointed by the petitioner that the briquette machine, blower machine and two carbonised plants made out of fire bricks and precious tiles each having a chimney having 22 feet height (demolished to the ground level) along with iron ladder and all of its foundation including blower has been demolished and damaged in massive extent. In the factory I met one Sukumar Jaiswal, son of late Biswanath Jaiswal who described himself as the care-taker of the said factory premises. On enquiry, he informed me that at about 7 P.M. on 2nd September, 1985, police men alongwith some persons representing themselves as CMDA officials came to the factory premises at about 10 A.M. on that date. The police men and the persons along with 200 masons entered into the said factory premises and started demolishing the construction of the factory including the machineries. According to the statements of Durwans, hammers crow-bars and oxygen gas cutters of heavy type was used for the said work. The said persons lighted up with three generators brought by them and in the presence of the police authorities and the CMDA officers, started demolishing the said factory. The demolition work continued till 9-30 A.M. on 3rd September, 1985. I also met one Arbinda Kayai who told me that there was a shebait of a Mandir situated near the premises. He had seen the entire demolition work going on in the night of the said premises and after demolishing the said factory, they left the locals around 9-30 A.M. on the said day. I also met some labourers who also had taken part in the construction of the factory and were simply dumb founded and starting weeping before me. I was told by the petitioners that if the factory started production which it was going to do in course of a week, or two, it would have employed anyway about 200 people.

3. Along with the report, the photographs taken by the Special Officer were

annexed and from the photographs, it appears that the plants and machineries which were installed there, were damaged mercilessly deliberately and motivatedly and apparently it appears that such a destruction could not be made in ordinary course overnight. The nature and extent of the damage as appearing from the photographs is really painful. It may be mentioned that the contents of the said report was not disputed or challenged by any of the parties in the proceeding. On receipt of the said report of the Special Officer which disclosed a horrible state of affairs, I directed the respondents Nos. 8, 10 and 11 to be personally present before the Court who were (8) The Land Acquisition Collector, (10) District Magistrate, Howrah and (11) Superintendent of Police on 9.9.85. On 9th September, 1985, all these officers appeared and at the hearing Mr. Tapas Chandra Ray, learned Senior Advocate appearing of behalf of the C.M.D.A. stated in court which was recorded in the order that "The action in question was taken by his clients in view of the order passed by A.K. Sengupta, J. and wants time to file affidavits disclosing the entire facts." In view of the submissions made by Mr. Ray, personal appearance of District Magistrate Superintendent of Police and Land Acquisition Collector, Howrah were dispensed with. Respondent No. 2 was directed to file an affidavit-in-Opposition by Wednesday next. The affidavits were filed by the respective parties.

4. In the affidavits-in-opposition filed on behalf of the CMDA, the stand taken by the CMDA was that (a) the petitioner trespassed into the land without any right, title and/or authority whatsoever inasmuch as the State Government requisitioned a vast area of land including the disputed lands under the provision of West Bengal Land (Requisition and acquisition) Act, 1948 and that possession whereof was taken by the respondents, and the CMDA was within its power to evict the petitioner who according to them was trespasser, in such manner.

5. It is necessary to set out in details the case of the CMDA in this behalf :

(a) That by the order dated 12th May, 1984, the said land-in-question was requisitioned by the orders passed u/s 3(1) of the West Bengal Land (Requisition and Acquisition) Act, 1948 (referred to as the said Act) whereby the possessions of all the lands including the disputed land was decided to be taken over on 17th May, 1984 at 9 A.M. and that the notice in respect of the land in question addressed to Lakshman Laskar, Rajkrishna Laskar, Ganesh Laskar, Juden Chandra Laskar, Ananda Laskar who were the owners of the said lands, were duly served on one Pintu Laskar on 13.5.84 who had accepted the same on behalf of all the owners in question and the Process Server solemnly affirmed before the additional Land Acquisition Collector (H.I.T.), Howrah on 17.5.84 that as he could not get the persons mentioned in the notice at the addresses given, he served the notice on a person on their behalf. But the possession of the said lands under requisition could not be taken on 17th May, 1984;

(b) That against the said requisition of the land for the purpose of West Howrah Township Project, Bankra Nagarik Forum moved a writ application before this Court in C.R. No. 16562(W) of 1984 and on the said writ application, A.K.

Sengupta, J. of this court was pleased to pass an order on 22.5.84 whereby CMDA was restrained from requisitioning the said land and ultimately on 17th September, 1984, A. K. Sengupta, J. was pleased to pass the following order :

I have given anxious attention to the rival submissions. When the new project for development is taken up, such development may cause inconvenience and hardship to many, but when project is completed it will enure to the benefit of all. In this case, the entire vacant land of the village is being requisitioned for the West Howrah Development Project and such includes both agricultural and non-agricultural land. If all the lands are taken possession of at the same time, then the agriculturalists will be in great difficulty and distress, particularly those who are entirely dependent on cultivation, But a balance ought to be held between the competing interested. Having regard to the magnitude of the problem and the object for which the lands are being acquired, I am of the view that the following directions should be given to the respondents :

(i) The respondents shall take symbolical possession of the vacant land excepting in those cases where notices have been issued against the dead persons and thereafter take symbolical possession of such land at the time of taking the possession, the respondents shall make a survey of the lands which are being taken possession of, are being used by the owners.

(ii) The respondent shall not take steps for acquiring land until the present cultivation season is over and the harvesting is completed.

(iii) In the mean time, the respondents shall assess the market value of the land provisionally and shall pay 75% of the compensation on the basis of the market value to the owners of the land to enable them to have a new source of livelihood where such persons are entirely dependant on the said land.

(iv) The respondents shall take actual possession of the land after payment of 75% of the compensation as directed by this order and only after the end of the sowing season, in any event not before 15th January, 1985.

6. It is the case of the CMDA that on 18th October, 1984, CMDA took symbolical possession of the entire land through the Collector, Howrah and at the time of taking symbolical possession, CMDA had encircled the entire area by putting a rope. It was further stated that no fresh notice was issued, but at the time of taking over such symbolical possession, announcement was made through microphone at the locality. It was further stated that the Land Acquisition Collector, Howrah was however, while preparing the list of erstwhile owners of the said land after 18.10.84 for the purpose of payment of compensation found that there were cases where names of the owners were at variance with the names shown in the record of rights and as such the verification in respect of the owners of each of the land was undertaken and in course of that proposed act of trespass, and the unauthorised construction was detected. It was also admitted by the CMDA that on the disputed plots in question, the petitioners started some construction sometime prior to July 26, 1985, and Shri Amiya Kumar Mukherjee,

valuation officer of the said Land Acquisition Office, Howrah went to the spot for schedule enquiry in respect of the ownership and the erstwhile owners of the said plots, detected first about the said construction of factory made by the petitioner and on 27th July, 1985, addressed a letter to the Deputy Secretary (Acquisition), CMDA drawing the attention about the said facts and the Deputy Secretary (Acquisition) CMDA received the said letter on 30.7.85. It was further alleged that the CMDA authorities visited the said plot on 2nd August, 1985 when the petitioners were continuing with the work of construction. It was the case of the CMDA that the officers of the CMDA threatened the petitioner No. 2 who had occasion to meet with them and asked him to dismantle the construction and vacate the land and that ultimately it was decided in or about last week of August, 1985 that in the event the petitioners did not remove the said construction and materials, the CMDA should prevent the petitioners from continuing to trespass into the CMDA land and for that 1st September, 1985 was fixed for the purpose as the Deputy Secretary (Acquisition) CMDA allegedly gave time to the petitioner to remove the said construction within 31st August, 1985.

7. It was alleged that on 31st August, 1985, Shri Swapan Das, Executive Engineer, CMDA went to the spot and prepared a sketch of the position of the construction made on the said land in question. It was further alleged that as by 31st August, 1985, the petitioners did not remove the said structures and construction and were continuing in possession daringly, the CMDA decided to remove the structures and upon informing the police authorities and the District Magistrate, Howrah. It was alleged that they started the operation at 8 O'clock on 1st September, 1985, sent a message to the Officer-in-Charge of Domjur police Station who was at site when the petitioner had obtained an order from the Executive Magistrate u/s 144. Immediately on receipt of the said information, the Officer-in-Charge of the Police Station informed the CMDA officials about the same and according to them they stopped dismantling operation. Thereafter, the CMDA decided to move the learned Magistrate to vacate the said order u/s 144 of the Cr. P. C. and this could not be done before 2nd September, 1985. It was alleged that Officer-in-Charge, Domjur Police Station issued a notice upon the CMDA to produce necessary papers for enquiry as directed by the Magistrate and fixed the time for enquiry at 8 A.M. on 2nd September, 1985. It is alleged that the CMDA officials appeared before the Officer-in-Charge of the police station and without inspecting the factory premises and/or without giving the petitioner any opportunity and/or hearing, a report submitted by the Officer-in-Charge of Domjur Police Station, the said order was vacated by the Executive Magistrate and thereafter the CMDA removal work whereby it was admitted in the affidavit-in-Opposition of the CMDA that, two machines had to be dismantled by cutting the legs of those with gas cutters on 3.9.85 morning.

8. After the CMDA filed the affidavit-in-opposition the writ petitioners filed affidavit-in-reply alleging the following points in support of the case of the petitioners :

(a) That there was no valid or legal order of requisition in respect of the disputed lands inasmuch as in the instant case the original requisition order dated 12th May, 1984, it was provided that possession of the land in question would be taken on 17th May, 1984 but possession was not taken on that date and as a result thereof the said order for requisition became invalid and illegal.

(b) Notice in respect of the disputed lands were issued in the name of dead persons and notices were not served on the owners and/or occupiers of the land in question as mandatorily required to be done under the law.

(c) The purported possession purportedly taken on 18th November, 1984 was invalid as before taking such possession no notice was given to anybody.

(d) Purported taking over of possession by mycrophonic announcement is an unknown procedure under the law and as such possession is on the face of it illegal and void.

(e) Taking of symbolic possession, contrary to the prescribed mode of taking over possession, might be binding upon the parties in the Civil Rule disposed of by A.K. Sengupta, J. but the same was not binding upon the other parties.

(f) In any event, on the strength of the order of A.K. Sengupta, J. the possession of the disputed lands could not be taken as the owners were dead.

(g) The petitioner was deprived of his property without the authority of law.

(h) Even assuming that the petitioners were a rank trespasser, the petitioners could not be evicted without following the provisions of the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962.

(i) In the absence of any law authorising the CMDA and/or without obtaining any order from any competent court, they had no authority and/or jurisdiction to take law in their own hand and to demolish the factory premises.

9. The main question which calls for determination by this court is whether or not there was at all any effective, legal and valid order of requisition of the plots in question under the provision of the West Bengal Land (Requisition and Acquisition) Act, 1948. If the answer was affirmative whether the CMDA had any authority to act in the manner it had admittedly done in the facts and circumstances of the case. Mr. Sakti Nath Mukherjee, learned advocate appearing on behalf of the petitioners, contended in the first place that the notice u/s 3 of the said Act in respect of the land in question was alleged to have been issued in the names of (1) Lakshman Laskar, (2) Rajkrishna Laskar, (3) Ganesh Chandra Laskar, (4) Juden Laskar, (5) Ananda Laskar in respect of the plots Nos. 6 and 7 in question and notice was issued in respect of plot No. 12 against Lakshman, Rajkrishna and Ganesh and Ananda and in respect of plot No. 13, notice was issued in the name of Lakshman Chandra Laskar, Mr. Mukherjee stated that admittedly Rajkrishna, Ganesh and Juden Laskar died long back and only Lakshman, namely the respondent No. 16 was alive at the relevant time. It was

further pointed out that from the purported requisition orders, it appeared that the Land Acquisition Department purported to have been served such requisition worders upon one Pintu Laskar, son of Lakshman Laskar on 13th May, 1984 and on 15th May, 1985 respectively and from the purported possession certificate, it appeared that the symbolic possession of the said land have been taken on 18th November, 1984. The affidavit was also filed on behalf of the petitioner to the extent and no order was served upon the Pintu Laskar and the signature appearing on the copy of the order, was not the signature of Pintu Laskar who is about 16 years old. It was further stated that in any event the said Pintu Laskar was not the agent of the owners of the land and he had never any authority to receive any notice on behalf of the owners particularly the dead persons. The admitted position was that, the possession of the land was not taken on 17th May, 1985 as mentioned in the requisition order and that it was alleged that the possession was taken after the order was passed by A.K. Sengupta, J. The possession that was alleged to have been taken, was symbolic in nature and that before taking over possession of symbolical possession on 18th October, 1984, no fresh notice was served on the owners or the occupiers of the land in question as required under the law.

10. Mr. Mukherjee submitted that in order to constitute a valid order of requisition under the said Act, the following mandatory requirements must be observed;

(a) that there must be an order passed by the competent authority as required u/s 3(1) of the said Act;

(b) that the notice of such requisition must be served not only upon the owners, but also upon the occupiers of the land in the manner prescribed under the rules and

(c) that the possession should be taken on the date and time mentioned in the order itself.

11. In other words, it is the submission of Mr. Mukherjee that unless all these three conditions are fulfilled and/or complied with, there could not be any valid and/or legal order of requisition under the said Act and that under the provisions of the Act and/or Rules, possession could not be taken over without serving notice upon the owners and occupiers of the land in question in the manner prescribed in the rules. It was specifically pointed out that taking over symbolic possession of the land in question is dehorse of the provisions of the Rules as the relevant Rules in this behalf sets out the modes of taking over possession and that such symbolical possession had no legal sanction at all. It was also pointed out that the judgment of A.K. Sengupta, J. was not binding upon the petitioners inasmuch as the predecessors-in-title of the petitioners were not parties in the writ application on which A.K. Sengupta, J. passed order and that the said order of taking over possession symbolically might be binding upon the parties in the said Civil Rule, but the same was not binding upon the petitioners and others and

as such the land Acquisition Department could not take over possession by the special mode prescribed in the order passed by A.K. Sengupta, J. in so far as the lands of the petitioners are concerned. Mr. Mukherjee further contended that even assuming that the petitioners were rank trespassers, in that event and even assuming that there were valid order of requisition and possession of the land in question had been validly taken, in that case also the CMDA had no authority and/or jurisdiction to take over the possession of the said lands by use of force and to demolish the structures in question and in support of his contention, Mr. Mukherjee. further submitted that in India the trespassers could not be evicted by use of force and relied on the decision of Supreme Court of India in *Lalu Yeshwant Singh vs. Rao Jagadish Singh* reported in AIR 1968 S.C. 620 wherein the Supreme Court of India held that in India persons are not permitted to take forcible possession of the property and they are entitled to such possession as they are entitled through court. It was further observed by the Supreme Court that Law respects possession even if there is no title to support it. But it will permit no person to take law in his own hand and to disposses a person who is in actual possession without having recourse to court and that no person can be allowed to be a judge of his own cause. Reliance was also placed to another judgment of the Supreme Court in the case of *Bishan Das and Others Vs. The State of Punjab and Others*, wherein the Supreme Court observed that the "State or its Executive Officers cannot interfere with the rights of the others unless they can point to some specific Rule of law which authorised their acts. The executive action taken in this case by the State and its officers was destructive of the basis principle of Rule of law" Mr. Mukherjee further submitted that even assuming that the petitioners were trespassers in respect of the land in question, in that case, the respondents have no authority and/or jurisdiction to evict the petitioner save in accordance with the provisions of the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 (Act 13 of 1962) (referred to as the Eviction Act). Reference was also made to the definition of owners as provided u/s 2(h) of the said Eviction Act. Mr. Mukherjee contended that even a trespasser in respect of requisitioned land ought to be proceeded with under the provision of the said act for eviction in which there is a specific provision for giving notice to unauthorised occupants and/or the trespassers are entitled to be heard and that the prescribed authorities are to determine whether the persons were in unauthorised occupation of the said land or not and thereafter can pass an order for eviction if it was found they were trespassers. The said act also provides for an appeal against the order of eviction passed against the trespassers and the said appeal is heard by some judicial officers in a judicial proceeding. Mr. Mukherjee submitted that the provisions of the said Eviction Act are to be complied with before the said respondents would take over possession from a trespasser. Admittedly in this case that was not done. Mr. Mukherjee further contended that after the deletion of Article 31 of the Constitution of India by the 44th Amendment of the Constitution, Article 300A had been introduced in the Constitution, of India which provides that "No person shall be deprived of his property save by authority of Law". Mr. Mukherjee submitted that the petitioner

was forcibly dispossessed from the said land with police force in clear violation of provision of article 300A of the Constitution of India and further the CMDA people with the help of the police had deliberately, motivatedly caused damage and completely demolished a newly built factory premises which was set after obtaining permission from the authorities concerned and dismantled the machineries and in the facts and circumstances of the case, Mr. Mukherjee contended that it is a clear case the officers of the CMDA and the State Respondents had wrongfully trespassed into the land of the petitioner and without any authority of law deliberately and mischievously damaged the factory premises and had also damaged the plants and machineries belonging to the petitioner for which the Officers of the CMDA were entirely responsible. It was further submitted that the action on the part of the respondents was wholly unwarranted and that the CMDA being a creature of a Statute has no such power or authority to use such force and cannot take law in its own hand at its sweet will. No power or authority had been conferred upon the CMDA to take possession of land by use of force and to destroy a factory and under the relevant Act by which CMDA was created. In the instant case, it was submitted that such demolition of a newly set up factory is illegal, mala fide and contrary to the provision of the Act by which it was created and as a matter of fact in the instant case, the Calcutta Metropolitan Development Authority had done something which amounts to the deliberate destruction without the authority of law. Mr. Mukherjee further submitted that from the affidavits filed by the land Acquisition Collector as well as by the CMDA it has been made crystal clear that these authorities were either completely ignorant of the provision of law or in the alternative they have done so deliberately and mischievously with the full knowledge of the legal provisions in this behalf. Mr. Mukherjee submitted that the possession of the land in question was never taken over in accordance with law which is a mandatory requirement under the law and that the possession certificate which provides that "I have this day, the 18.10.84 receive symbolic possession by the order the Hon'ble High Court at the hand of A. Gupta S. V. Spl. L.A.O. (H.I.T.) of 91.83 acres of land situated in village Bankra P.S. Domjur, District Howrah for the purpose of West Howrah Project." was nothing but a mere paper possession. Mr. Mukherjee contended that such certificate of possession is on the face of it void and invalid as under the provision of the said Act, there is no provision for taking suo motu possession by the Land Acquisition Officer without formally taking it over from the respective owners. It was further submitted that under the Land Acquisition Act when the land is proposed to be acquired, a notification u/s 4 of the acquisition act is published in the Official Gazette and then after compliance with the provision of section 5A of the said Act, a declaration made u/s 6 of the Land acquisition Act which is also published in the official Gazette. But in the instant case, under the scheme of the Act in question, issue of an order u/s 3(1) of the said act and the service thereof u/s 3(2) of the said Act are mandatory requirements and this provision had to be strictly complied with as the Act provides for summary requisition of the land where no notification is issued or published in any Gazette and that there is no

scope for any hearing either at pre or post decisional stage. Under Such circumstances, it was submitted by Mr. Mukherjee that under the scheme of the said Act, simply passing an order on a piece of paper and a purported certificate of paper possession in which it declares that it had suo motu taken possession symbolically, is on the face of it invalid and such paper possession is not permitted under the law. It was further submitted by Mr. Mukherjee that the notice of requisition should be treated to have abandoned and made ineffective in the eye of law inasmuch as possession of the land-in-question was not taken over on the date fixed in the said notice and further there was no further notice extending the date of taking over possession. Possession taken through microphone is something which is not provided under any law for the time being in force in India. Mr. Mukherjee drew the attention of this court, the provision of Rule 3 of the West Bengal land (Requisition and Acquisition) Rules, 1948. The said Rule 3 prescribes the modes of service of an order passed under Sub-section (1) of Section 3 of the said Act and pointed out that the said Rule did not provide for taking symbolical possession and that too through microphone. Mr. Mukherjee lastly contended that in the facts and circumstances of the case which clearly establish that the respondents had taken law in their own hand and acted in a most reckless manner and caused huge loss and damages by demolishing the factory in question and deliberately and wilfully caused damages to the plants and machineries by use of gas cutters and also caused damages on the plants and machineries which made it unusable and for this atrocious activities on the part of the respondents, the petitioner is entitled to not only restoration of the property in question, but also entitled to get adequate compensation for such caused to the petitioner which amounts to not only loss to the petitioner but loss to the nation inasmuch as about 200 people would have got their employment in the said factory and the said factory was already ready for production of the coal briquettes and in support of his contention Mr. Mukherjee submitted that in the facts and circumstances of the case, the petitioners are entitled to the following reliefs :

(a) Restoration of the land in question;.

(b) restoration of the property in its original state;

(c) loss of business income and

(d) in the alternative of restoration of property in its original state entitled to get adequate compensation Mr. Mukherjee relied on a decision of the Supreme Court in B Shan Das case (supra) as well as the decision of the Supreme Court in Rudal Shah v. State of Bihar reported in AIR 1983 SC 1087 and Bhim Singh M.L.A. v. State of Jammu & Kashmir and others reported in AIR 1984 S.C 1026 in support of his contention that in a writ proceeding, the Court is not powerless to grant compensation in appropriate cases.

12. Mr. Tapas Chandra Roy, learned Advocate appearing on behalf of the respondents, took these following preliminary points:

(a) That the writ petitioners had not come before this Court with clean hands as the petitioners were wrongdoers and were not entitled to any discretionary relief in writ proceeding.

(b) The petitioners falsely stated that the petitioners have arranged for supply of power and would be starting the factory from the 2nd week of September, 1985. The petitioners had violated the provision of Rule 3 of the West Bengal Factories Rules, 1958 which requires approval of the site and plan etc. for getting licence in this behalf for running such factory.

(c) The petitioners had violated the provision of West Bengal Town and Country (Planning and Development) Act, 1979 by not obtaining any permission before making such construction as required u/s 46(1) of the said Act. Section 52 of the said act provides for penalty for unauthorised development or for use otherwise than in conformity with the development plan made under the said act,

(d) The petitioners had also violated the provision of Section 72 of the Non-Agricultural Tenancy Act as also violated the provision of Section 4(4) of the West Bengal Land Reforms Act by putting into use of agricultural land for non-agricultural purpose without obtaining any permission.

12. On the merit of the case, it was submitted that after the order was passed u/s 3(1) of the said Act possession could not be obtained and in the mean time, a writ petition was filed before this Court which was ultimately disposed of by A.K. Sengupta, J. as mentioned above and on the strength of the order passed by A.K. Sengupta, J. symbolical possession was taken when was valid and proper and it should be taken that the possession of the land-in-question was taken in accordance with the order passed by this Court. It was further submitted on behalf of the respondents that the writ court cannot assess the quantum of damages suffered by the writ petitioners even assuming that the actions of the respondents were illegal.

13. It is necessary to consider the preliminary points raised by Mr. Roy in this behalf first. In view of the admitted position that the predecessors-in-title of the petitioners were not parties in the earlier writ proceeding and it is alleged that some of the original owners were dead long back and admittedly no notice whatsoever was served upon the predecessors-in-interest as well as the occupiers of the said land-in-question, the petitioners could not be thrown out on the ground that they had not come with clean hand even assuming that they had come with uncleaned hand at the instance of the Respondents whose hands are, it is alleged tainted with blood. Whether the petitioners have taken steps to start the factory on a particular date is not at all relevant or germane to the issues raised in the writ application. Further if there were any violation of Rule 3 of the West Bengal Factories Rules, 1958, the authorities under the Factories Act would be entitled not to issue any licence, but that did not on the fact of it indicate that the setting up of a factory on the face of it was illegal and thus liable to be demolished. Regarding the violation of the provision of Section 46 of the West

Bengal Town and Country (Planning and Development) Act, 1979 for not taking permission before making any such construction from the authorities concerned, the petitioners might have acted illegally and that section 52 of the Act provides penalty for unauthorised development or for use otherwise than in conformity with the development plan and the penalty prescribed is simple imprisonment with fine. But there was no provision under the said Act for automatic and forcible demolition of any construction made in violation of the provision of section 46 of the said Act without giving any opportunity of being heard. Section 53 of the said Act provides for demolition or alternation of any building or quarters, but such demolition can only be made after serving the owners the notices. But admittedly in this case even assuming that the construction of the factory itself was made illegally, no notice whatsoever was issued by the authorities concerned and it is an admitted case that without any notice and/or without giving any opportunity of being heard, the factory including the plants and machineries were demolished and dismantled as indicated earlier. This prima facie, in my view, is contrary to the provisions of Section 53 of the said Act. Section 54 of the said Act provides power for stopping unauthorised development. Regarding the violation of provision of section 72 of the West Bengal Non-Agricultural Tenancy Act, in my view, is not applicable in the facts and circumstances of the case. Regarding the violation of Section 4(4) of West Bengal Land Reforms Act, I find no merit in this objection inasmuch, when an application for conversion of agricultural land into non-agricultural land is made and applications are made, the only thing, that is done, is increaing in the quantum of rent payable in respect of the land in question. But violation of that section does not ipso facto render the setting up of the factory illegal which confers power upon the CMDA to demolish in the manner it has done. Accordingly, all the preliminary objections raised by the respondents are overruled as the same cannot be of any assistance to the Respondents when there are serious allegations against them. A little wrong on the part of the petitioner cannot justify committing of a greater wrong on the part of the Respondents, who are public authorities.

14. The first point raised by Mr. Mukherjee is that the land-in-question has not been validly and properly requisitioned under the provision of West Bengal Land (Requisition and Acquisition) Act, 1948. Under the scheme of the provision of Section 3 of the said Act, a requisition is valid and proper if the following conditions are fulfilled;

(i) That the authorities concerned had formed a bonafide opinion about the necessity for requisition of the land-in-question for the purpose mentioned in Section 3(1) of the said Act.

(ii) That copy of the order must be served not only upon the owner of the land but also upon the occupiers of the land-in-question in the manner prescribed under Rule 3 of the said Rules.

(iii) Thirdly, that the possession of the land-in-question had been taken by the

requiring authority from owner and/or the occupier of the land in question on the date and time mentioned in the order.

15. In the writ application, the petitioner did not challenge the passing of the order as required u/s 3(1) of the said Act. What was challenged is, that copy of the order as mandatorily required to be served in the manner prescribed under Rule 3 of the West Bengal Land (Requisition and Acquisition) Rules, 1948 upon the owner and/or the occupier of the said land in question was not followed and served. Further the possession of the land was not taken on the date specifically mentioned in the order of requisition. In the order of requisition, the date of taking over possession was fixed on 17th May, 1984, but the admitted position is, that the possession was purported to have been taken on 18.10.84 in pursuance of the order passed by A.K. Sengupta, J. mentioned above. It is also an admitted position that the order or requisition was not served upon the owners of the plots in question inasmuch as hereinbefore stated excepting Lakshman Laskar all of them were dead and further notice issued against dead persons are all illegal and void. In this case, the process server who was entrusted for the job of service of the requisition order, affirmed an affidavit and in the said affidavit, the process server stated that, on going to the residence of the Laskars, he met Pintu Laskar, son of Lakshman Laskar, and come to know that the other persons were not available as all of them had gone out for their work and that the process server was not told that Rajkrishna, Ganesh and Juden died long back. The fact that those persons were dead was not disputed and admittedly in this case orders we issued in favour of some dead persons and admittedly, the copies of the orders were not served on the owners as required under the law. Further there was no attempt to ascertain who was the occupier of the land and further the respondents in their affidavit were silent whether any attempt was made to serve upon the occupiers of the land. The owners might have been dead, but the heirs or other persons might be in possession of the said land but no service of notice was attempted to be made against the occupiers. So u/s 3(2) of the said Act, the orders were also required to be served upon the occupiers which was admittedly not done in this case. Mr. Mukherjee further pointed out that the order of requisition is a composite order in which not only the orders are passed, the date and time of taking over possession are also mentioned. As under the scheme of the said Act, the order of requisition is passed for the purpose of speedy requisition in a summary manner and that if possession is not taken on the date given in the order, in that event, it should be taken that the said notice had been abandoned, waived and/or relinquished. As Mr. Mukherjee submitted that after all this summary procedure for requisition of a land is not the ordinary way and under the circumstances when the citizen is deprived of his right of property in such summary manner, the provisions of the requirement of the Statute must be strictly observed and any deviation from the procedure in this behalf shall render the order-ineffective and void. In my view, in case like this, the administrative agency must exercise the powers that the legislature may have given to them in the manner and in accordance with the

procedure that might have been specified by the legislature. Where an authority was required to serve a notice in the manner prescribed and that the same is not done, in that event, the notice is held void. Normal consequence of non-compliance with the procedural requirement or safeguard is invalidity. In my view, this requirement of service of notice strictly in accordance with the provision of section 3(2) of the Act read with Rule 3 of the said Rules is a mandatory requirement and in the facts and circumstances of the case, noncompliance of the procedural requirement makes that proceeding void and ultra vires. The administrative agencies are not only subject to substantive rule of ultra vires, but they are also subject to procedural rule of ultra vires. Accordingly, I hold that the order or requisition passed u/s 3(1) of the said Act was not served upon the owners and/or the occupiers as contemplated u/s 3(2) of the said Act in accordance with the procedure laid down under Rule 3 of the said Rules.

16. Secondly, in the instant case the respondents' case was that the possession of the land in question was taken over pursuant to the order and judgment passed by A.K. Sengupta, J. Though the order of A.K. Sengupta, J. laid down various conditions and/or restrictions and though it has not been disclosed by the respondents that these conditions and restrictions imposed by A.K. Sengupta, J. in the said writ had been complied with, the respondents cannot take shelter of the order of A.K. Sengupta, J. in this case, inasmuch as it has not been established that the predecessors-in-interest of the petitioner and/or the petitioners were party to the earlier proceeding. As such, the said order of A.K. Sengupta, J. was not binding upon the petitioner even though, that the same might be binding on the others who were parties to the earlier writ application. Mr. Mukherjee further submitted that even assuming that the order of A.K. Sengupta, J. was binding upon the petitioners, in that case also, according to Mr. Mukherjee the law of this country in this behalf does not recognise taking over possession in the manner laid down by A.K. Sengupta, J. namely taking over symbolic possession. When the rules prescribed the particular and/or the taking over possession by some other unknown method is permissible or not is a question. I think that it is necessary to go into such a question and I do not propose to make any comment in this writ application inasmuch as so far as the petitioners are concerned, the petitioners cannot be said to be binding by the orders of A.K. Sengupta, J. and secondly, admittedly before taking over possession in accordance with the mode prescribed by A.K. Sengupta, J. no notice whatsoever was given to the owners and/or the occupiers of the land in question. When possession could not be taken for any reason whatsoever on the date mentioned in the order itself, in my view, it was imperative under the scheme of the Act on the part of the respondents to issue fresh orders and/or to notify the date of taking over possession by issue of a fresh notice. I am constrained to take, this view because the right of property of a citizen could not be dealt with lightly. When land is acquired under the Land Acquisition Act, there are several prescribed procedures like publication of the notification in the

Gazettee u/s 4, hearing of objection u/s 5A of the Land acquisition Act and thereafter publication of declaration u/s 6 of the Land Acquisition Act in the official Gazette and before taking over possessions notices are given within the scope of the impugned Act which prescribed summary requisition under certain contingency the minimum requirement in that copy of the order must be served upon the owner and occupier which will not only contain the order but also the date and time of taking over possession. Unless notice is served intimating the date and time of taking over possession and unless the possession is taken after serving a notice in the prescribed manner, the requisition cannot be said to be completed and under such circumstances, the respondents cannot claim that the land had been requisitioned and possession had been taken lawfully. In the instant case, the respondents admitted that before taking over possession of this vast area of 91.83 acres of land in village Bankra, announcement was made by the microphone and thereafter symbolical possession was taken by fixing pegs. In my view, announcement over microphone that possession was being taken, cannot be equated with a notice as contemplated. Under the law and cannot be said that this indigenous method of announcement about taking over possession is of sanctioned by law and in my view, taking over possession by announcement through microphone and taking over symbolical possession is not contemplated under the law, Law has not conferred any such discretion upon the authorities concerned to take possession in any manner they like and/or before taking over possession instead of serving notice as required under law, they are not authorised to substitute the mode of serving notice by given notice through microphone. After all this is a case where a citizen is deprived of his property and in view of the provision of article 300A, a citizen could not be deprived of his property save by authority of law. In this particular case, the manner and the move in which possession was sought to be taken, is not provided by the law. and as such, in my view, the manner and the mode in which possession has been taken is de hors the Statute and as such it is on the face of it violative of provision of article 300A of the Constitution of India.

17. The next important of Mr. Mukherjee's argument is that the action of the Calcutta Metropolitan Development Authority was illegal, mala fide and arbitrary in entering into the factory premises and causing destruction not only to the factory premises but also to the plants and machineries. In this case as already held that in respect of the disputed lands, there was no valid and proper order of requisition inasmuch as the order of requisition was not served upon the owner and/or the occupier as required under the law and secondly the possession whereof was also not taken in accordance with law and as such it must be held that the title and the possession of the land in question remained with the erstwhile owners of the land who had transferred the said land to the petitioners on valuable consideration and further before the purchase of the land in question, the petitioners not only held extensive search from different officers but also issued a notice to the Newspaper drawing to the attention of all the authorities that the petitioners were going to purchase the land in question and

that anybody having any objection in the said matter might be intimidated. This atleast shows bonafides on the part of the petitioners, whatever may be the legal effect of issue of such notice in the Newspaper before purchase of the said land-in-question. It is also an admitted position that, after taking permission from the Gram Panchayat and after taking registration from the small scale Industries of the Government and after approval of the proposal and after obtaining loan from the bank, the petitioners had set up a factory which according to the report of the Special Officer, is a modernised factory and that the petitioners installed generators after installation of costly plants and machinery for starting its production. At this stage; the Calcutta Metropolitan Development Authority under the cover of darkness and with police help demolished the factories including the plants and machineries thereof. Admittedly, the CMDA did not issue a notice upon the petitioners and did not make any correspondences with the petitioners. Though it was alleged that the petitioner No. 2 had occasions to visit the office of the CMDA. In my view, it is immaterial whether the petitioner No. 2 had visited the office of the CMDA inasmuch the officers of the CMDA are not excepted to act in such a cavalier and reckless manner before taking possession to demolish the factory premises in question in the manner disclosed in the report of the special Officer.

18. Mr. Mukherjee pointed out that even assuming that the petitioner was a rank trespasser in respect of the requisitioned land, in that even also the CMDA had no authority take law in their own hand and could not demolish the structures in such a manner even under the provisions of West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962, Under this Act, petitioners were required to be served with a notice by which the petitioner should be afforded with an opportunity to be heard and any decision taken for the eviction from the land in question, there is a provision for appeal. These are the minimum procedural safeguards provided in case of trespasser of a land belonging to such public Authorities. Public land has been defined u/s 2(7) of the said Act which includes "requisitioned land and in my view, Mr. Mukherjee's contentions in this regard must be upheld. namely that a trespasser from such land could not be thrown out by use of force when there is a specific provision in this behalf which confers power upon the administrative authorities to recover possession in a summary manner. But in that case also there are certain safeguards which are required to be followed and admittedly in this case the petitioners were never informed by the authorities of the CMDA that the petitioners were in unauthorised occupation of the land in question and that the petitioners were never informed that they are going to take over possession forcibly and in the circumstances, it appears that the officers of the CMDA took law in its own hand in a manner which is not only unauthorised and illegal but caused serious danger to the right of property. In my view, the officers of the CMDA had no authority and/or jurisdiction whatsoever to take over possession of the land in question even assuming that the petitioners were rank trespassers and that petitioners had forcibly made construction on the land belonging to the CMDA. As already held that there was

no authority or valid order or requisition and that in the facts and circumstances of the case, the CMDA had no right title or interest on the land-in-question. As such contentions of Mr. Mukherjee must be held that the authorities of the CMDA had trespassed into the land of the petitioners and caused damages to the property to the factory-in-question which was demolished and razed to the ground.

19. In this connection, it is necessary to highlight the role played by the officer-in-charge of Domjur Police Station. In this case, learned Executive Magistrate directed the Officer-in-Charge of Domjur Police Station to enquire and to report. A copy of the report has been annexed to the affidavit affirmed by Swapan Kumar Mukherjee, Officer-in-Charge of Domjur Police Station. In the report submitted by the Officer-in-Charge alleged that C.M.D.A. took over possession of the land by fixing pillars which was admittedly not correct and secondly it was also alleged that the petitioners alleged to have purchased the land in question unauthorisedly and illegally and they are trying for occupying the said land of C.M.D.A. by adopting unfair means and using force. They are also trying for constructing pucca structures and thereby trying to disturb the peaceful possession of the C.M.D.A. authorities. I may add further that there is no apprehension of any breach of peace at the instance of O.P.s." This report of the Officer-in-Charge submitted on 2.9.1985 on the basis whereof the learned Magistrate vacated the order for maintaining status quo was submitted in a reckless manner and at the total sacrifice of truth. It was admitted by the affidavit-in-opposition filed by the C.M.D.A. that the petitioner had constructed factory premises and had installed plants and machineries thereon. It was also admitted by the C.M.D.A. that they had demolished the structures and dismantled the plants and machineries by use of gas cutters and with the help of a large number of police force. Under such circumstances, in my view, the Officer-in-Charge of Domjur Police Station is guilty of submission of a deliberately wrong and misleading report which clearly indicates that the Officer-in-Charge did not care to inspect the factory premises of the petitioner, but prepared a report sitting in office on the basis of the papers produced by the C.M.D.A. authorities and at their dictates. If the Officer-in-Charge had visited the place, in that event such a report containing such frivolous statement could not have been submitted. In my view, this report submitted by Domjur Police Station is partly responsible for the colossal loss made to the petitioner. The Officer-in-Charge of Domjur Police Station should not have acted in such a reckless manner and he should not have submitted such a misleading, incorrect and baseless report and such an act on the part of such an officer has in effect betrayed the confidence reposed on such officer under the law.

20. As already held that there was no authority and proper order of requisition in respect of the land and the C.M.D.A. authorities had acted illegally, wrongfully and malafide in demolishing the factory premises and dismantling the plants and machineries, now the question is what the relief the petitioner is entitled to in the writ application. Mr. Mukherjee submitted that the respondents should be

directed to restore the factory before it was dismantled, or in other words to restore the property in its original state or in the alternative to pay compensation for such loss deliberately caused to the petitioners including the loss of business income. On this question it was submitted by Mr. Roy, the learned Advocate appearing on behalf of the C.M.D.A., that in case it is found that the C.M.D.A. authorities had caused wrongful loss to the petitioners, in that event, can recall it from appropriate authority by way of a writ. This aspect of the matter requires to be carefully considered. It is a well known proposition that rights depend on remedies. Now the question is if the right to property is infringed and where the fundamental right of business as guaranteed Under Article 19(1)(g) of Constitution of India is infringed whether the writ petitioner is entitled to any relief in a writ proceeding. In other words, what is the practical method of enforcing such right. Actions for damages is a recognised mode for realisation of damages. But where it is apparent and clearly established that the petitioner has suffered loss caused by the wrongful acts on the part of the respondents, is the writ court powerless to give any relief in such case. This is a case where the petitioner suffered damages for unjustified tortious injury and damages caused by wilful acts on the part of the C.M.D.A. Mr. Mukherjee, in support of his contentions that the writ court is not powerless to grant reliefs, referred to the decision of the Supreme Court of India in the case of *Rudul Sah Vs. State of Bihar and Another*, . In that case the Supreme Court in the context of illegal detention after acquittal in trial, Supreme Court passed order for compensation and at paragraph 10 at page 1089 observed that "in these circumstances, refusal of this court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured is to compel its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which presents for their protection the powers of the State as a Shield. If civilisation is not to perish in this country as it has perished in some others too well-known to suffer mention, it is necessary to educate ourselves into accepting that respect for the rights of Individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers. At paragraph 11 of the said judgment it was observed by the Supreme Court "taking into consideration that great harm done to the petitioner by the Government of Bihar. We are of the opinion that as an interim measure, the State must pay to the petitioner further sum of Rs. 30,000/- (Rupees thirty thousand) in addition to sum of Rs. 5,000/- (Rupee five thousand) already paid

by it. The amount shall be paid within 2 weeks from to-day". At paragraph 12, it was observed that "this order will not preclude the petitioner from bringing a suit to recover appropriate damages from the State and its erring officials. The order of compensation passed by us as we said above, in the nature of a palliative. We cannot leave the petitioner penniless until the end of his suit, the money appeals and the execution proceedings. A full-dressed debate on the nice points of fact and law which takes place leisurely in compensation suits will have to await the filing of such a suit by the poor Rudul Shah". Mr. Mukherjee also relied on the case of Sebastian M. Hongrsy v. Union of India reported in AIR 1984 S.C. 1026. In that case in a contempt proceeding for violation a writ of habeas corpus issued by the Supreme Court to produce two persons before the Supreme Court, the Supreme Court imposed exemplary cost of Rupees one lakh each to the views of the respective detanue. In that case, the Supreme Court observed that "a Civil contempt is punishable with imprisonment as well as fine. In a given case, the Court may also penalise the party in contempt by ordering to pay the cost of the application. A fine can also be imposed upon the contemnor". At paragraph 7 page 1028, Supreme Court observed "in the facts and circumstances of the case we do not propose to impose imprisonment nor any amount as and by way of fine, but keeping in view of the torture, the acting and monetary oppression through which Mrs. C. Thingkhulia, wife of C. Dennial and Mrs. Bhangamale, wife of Shri C. Paul had to face and they being proper applications, but formal applications being made by Sebastian M. Hongray we direct that as a measure of exemplary cost as a. permissible in such case Respondent No. 1 and 2 shall pay Rupees One lakh to each of the aforementioned two women within 4 weeks from to-day". Reference was made to another decision of Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others, . It is not necessary to set out the principle in details. In this case the petitioner was arrested and imprisoned with mischievous and/or malicious intent, it was held by the Supreme Court that in such a case, the mischiefs or malafide and invasion may not be washed away or wished away by his being set free and in appropriate case the Court have jurisdiction to compensate the victim by awarding suitable monetary compensation and a sum of Rs. 50,000/- was directed to be paid to the petitioner by the State. Accordingly I hold that in the peculiar tacts and circumstances of the case and the destructive role played by the officers of the C.M.D.A. which had resulted in demolition of a newly set up factory with its plants and machinery and it had also been deprived a large number of people from getting employment in these hard days of unemployment, I hold that the petitioner is entitled to adequate damages in such case apart from restoration of the land in question. Accordingly, I hold that:

(a) The disputed land on which the factory was established by the petitioners were not validly and properly requisitioned under the provision of the West Bengal Land (Requisition and Acquisition) Act, 1984 and that the C.M.D.A. had not acquired any right, title or interest en the strength of the purported order of requisition and the possession of the lands in question remained with the

petitioner.

(b) That the officers of the C.M.D.A. acted illegally and mischievously in trespassing into the said factory premises and demolishing the same causing colossal loss to the petitioners.

(c) That the petitioners are entitled to adequate compensation for the loss caused to the petitioners by demolition of the structures as also for loss of income and damages to the plants and machineries for which the petitioners are entitled as an adinterim compensation a sum of Rupees two lakhs from the C.M.D.A. and that the petitioners would be at liberty to file a suit for compensation where the full amount of the compensation should be computed on evidence and the sum paid in terms of this order should be deducted from the amount of compensation which would be determined in such proposed suit. I also make it clear that the C.M.D.A. would beat liberty to proceed against the erring officers who brought about to such asituation.

Let a writ in the nature of Certiory do issue quashing the order" of requisition passed u/s 3(1) of the Act in so far as the disputed plots in question at mouja Bankra, P.S. Domjur, District Howrah.

(b) Let a writ in the nature of Mandamus do issue commanding the respondents from interfering with the petitioners" possession of the land in question.

(c) Let a writ in the nature of Mandamus do it (sic)e commanding the respondent C.M.D.A. to pay a sum of Rupees two lakhs as interim compensation within a period of 6 weeks from do-day to the petitioner as an ad interim compensation which will be adjusted against the total amount of compensation payable in the proposed suit to be filled by the petitioner in this behalf. Considering the nature and extent of damages caused and the manner in which the plants and machineries were destroyed under cover of darkness with police force, the respondent C.M.D.A. shall pay an exemplary cost assessed at 750 G.M.s. The petitioner shall also pay 350 G.M.s to the Special Officer-cum-Receiver appointed by the Court over the property in question.

Rule is accordingly made absolute.