

(1992) 04 CAL CK 0027
In the Calcutta High Court
Case No : C.R. No. 2184 (W) of 1984

Kanak Kumar Dugar

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 03-04-1992

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 5A, 6, 6(1), 6(2)

Citation : (1992) 1 ILR (Cal) 345

Hon'ble Judges : Paritosh Kumar Mukherjee, J

Bench : Single Bench

Advocate : Samarditya Pal, Bijan Kumar Majumdar and Nadira Paiheria, for the Appellant; Kanak Kumar Chatterjee, for the Respondent

Judgement

Paritosh Kumar Mukherjee, J.—The writ Petitioner, Kanak Kumar Dugar, has in the instant writ petition, inter alia, prayed for a writ in the nature of mandamus commanding the Respondents, their subordinates and agents not to give any effect to and/or cancel the impugned notification dated December 17, 1982, passed u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as Act I of 1894) which is Annex "G" to the writ petition.

2. It appears from the said notification that the Department of Land and Land Reforms, Land Acquisition, had issued a notification that the land is likely to be needed for "a public purpose", namely, for use of the National Medical College, Calcutta, and its attached teaching Hospital (Chittaranjan Hospital) and it was informed that a piece of land, comprising premises Nos. 27/1A and 27/1B, Dehi Serampore Road, Calcutta, and a common passage measuring more or less 0.2835 of a hectare (P. 7006 of an acre) and bounded on the north by C.I.T. Road, on the east by Dehi Serampore Road and premises No. 27. Serampore Road, on the south by premises Nos. 24 and 26, Dehi Serampore Road and on the west by Sundari Mohan Avenue, was likely to be needed for the aforesaid public purpose.

3. When this writ petition was moved before this Court, Mrs. Padma Khastagir J.

had admitted the writ petition on February 1, 1984, and issued a Rule on March 7, 1984, in the presence of Mr. D.P. Majumdar, learned Advocate for the State, and also granted interim order directing the Respondents to take into consideration the objections raised by the Petitioner, particularly, the alternative land, already in possession of the Respondents and lying vacant, and apart from that, the Respondents should stay hands, till further orders of the Court.

4. The Rule was made returnable 8 weeks from the date of order.

5. It appears from the short judgment delivered by Her Lordship on March 7, 1984, at the time of issue of the Rule, that the Court noted the following facts:

(a) The Petitioner, pursuant to an agreement entered into on December 20, 1979 with the Respondents Nos. 3 and 4 took possession inter alia, of one two-storeyed building situated at No. 27/1A and the open land being portion No. 27 Dehi Serampore Road and was paying rent of Rs. 550 per month to the landlords.

(b) With the permission of the landlord, namely, private Respondents Nos. 3 and 4, the Petitioner planned to make addition and/or alteration and/or new construction by renovation the old structures.

(c) From the earlier requisition notice and/or certificate issued from the office of the Land Collector, Calcutta, dated April 10, 1988, for delivery of possession, it indicated that, the portion in the Petitioner's occupation were not included in such earlier requisition order dated April 10, 1948. The requisitioned premises, as indicated in the plan annexed to the petition was handed over to the Calcutta National Medical College Hospital for the purpose of providing hostel accommodation to the students, but the portion indicated in the plan belonging to the Petitioner had not been requisitioned at all. The only access from the road to the premises No. 27 is through the said land, which is otherwise surrounded by walls from all sides.

(d) The Petitioner received in September 1983, a notification u/s 4 of the Land Acquisition Act (I of 1894) issued by the Respondent No. 2" whereby the Petitioner was informed for the first time that the said land was likely to be needed for "a public purpose", as such it would be acquired at the public expense.

(e) The Petitioner, by letter dated October 5, 1983, objected to the validity and legality of the impugned notification, inasmuch as, the Petitioner contended that the said land could not be needed for "any public purpose", for the expansion of the National Medical College and/or its hostel as more than 30 cottahs of vacant land lying adjacent to the said College, while the Petitioner's land was in the corner, which could not cause any obstructions to such expansion scheme.

(f) Apart from that, as stated above, the access to the Petitioner's premises No. 27 was only through this open land. As such, according to the Petitioner, the landlords of the premises had caused the said notification to be issued with "an ulterior motive", only to get rid from the writ Petitioner.

(g) As such, the impugned notification had been initiated and issued at the behest of the Respondents Nos. 3 and 4 to avoid the provisions of the West Bengal Premises Tenancy Act, 1956, inasmuch as, the Respondents Nos. 3 and 4 failed to evict the Petitioner and/or dispossess from the said premises.

(h) Under the circumstances such proceedings for land acquisition had been started with an oblique motive.

6. After hearing Mr. Bhaskar Gupta, on behalf of the Petitioner, and Mr D.P. Majumdar for the State, Mrs. Padma Khastagir J. directed Mr. Gupta to serve a notice upon the Respondents so that the Court can hear the Respondents and then pass necessary orders.

7. The Court further directed the Collector, to hear "the objections" submitted by the writ Petitioner, u/s 5A of the Land Acquisition Act.

8. Mrs. Khastagir J. further referred to the decision in Daga Auto Service Pvt. Ltd. and Another Vs. The Land Acquisition Collector (Special Railway Cell), wherein it has been held as follows:

The question that falls for consideration is how far any alternative accommodation suggested by a party whose land is proposed to be acquired requires to be considered by the Land Acquisition Collector before making his report u/s 5A of the said Act. The main purpose of making a report u/s 5A of the Act is to find out whether the purpose proposed is a public purpose and whether there is any objection to the acquisition of the land for the said purpose. Whether or not there is any alternative land, would be better served by acquisition of any other property are not relevant, as such, but only relevant to the extent that if there is any alternative accommodation available which could be acquired, without causing inconvenience or less inconvenience or the purpose intended would be better served by acquisition of that property and if the Acquisition Collector does not take that land into consideration for acquisition then the order and report may become vulnerable, as arbitrary.

9. It further appears from the order sheet of the writ proceeding, that although the matter was heard in-part by Mahitosh Majumdar J. (as His lordship then was) on January 13, 1988, the Rule was discharged and all interim orders were vacated, inadvertently by Shamsuddin Ahmed J. by his order dated February 25, 1988, when no one had appeared on behalf of the Petitioner and subsequently on March 14, 1988, the said order was recalled and the matter was directed to be placed before Mahitosh Majumdar J. (as His lordship then was). Thereafter, the Rule was again discharged by Mahitosh Majumdar J. by his order dated February 7, 1989, and on February 9, 1990, after considering the application for recalling of the order dated February 7, 1989, and restoration of the Rule, the said order dated February 7, 1989, was recalled, subject to the condition that the Petitioner should pay costs assessed at 15 G.M. to the Cancer Research Centre, Thakurpukur, within one week from the date of order.

10. Ultimately, the writ petition was assigned by P.D. Desai C.J. (as His lordship then was) before me on December 17, 1990, and heard in-part by me on February 6, 1990, in the absence of the learned Advocate for the State Respondents, when this Court directed the Petitioner to serve a notice in the office of the Government pleader drawing his attention for appointment of a Government Advocate, as Mr. D.P. Majumdar, learned Advocate, who appeared in this matter on behalf of the State, was no longer in the Government panel.

11. On February 6, 1992, as no one appeared on behalf of the State and on the following day, i.e. February 7, 1992, Mr. Samaraditya Pal appeared for the Petitioner with Bijan Kumar Majumdar and Nadira Pathcria and Amal Kumar Basu Chowdhury appeared for the State, pursuant to the notice given in the office of the learned Government Pleader, when the matter was again heard in-part.

12. Ultimately, on February 28, 1992, Mr. Kanak Kumar Mukherjee appeared for the Respondents and the matter was heard in-part and the matter was further heard on March 4, 1992, and ultimately on March 12, 1992, the hearing was concluded and judgment was reserved.

13. During the pendency of the writ petition, a supplementary affidavit was affirmed on behalf of the Petitioner on February 5, 1992, whereby the Petitioner placed the subsequent facts, which are slated herein below:

After filing of the said writ application in January 1984, certain relevant facts have arisen which are stated hereunder:

(a) B(sic) letters dated October 5, 1983, and January 6, 1984, the Petitioner filed an objection u/s 5A of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act) before the concerned authorities. A copy of the said objections dated October 5, 1983, and January 6, 1984, are annexed hereto and collectively marked "A". Significantly no objection u/s 5A of the said Act was filed by the landlords Respondents Nos. 3 and 4.

(b) As far as the Petitioner has been able to ascertain that no order has been passed on the, said objections filed by Petitioner, by the Respondents. The said objection has been forwarded to Land Acquisition Department, Writers' Buildings.

(c) The Petitioner stated that on February 7, 1989, the said writ application was dismissed by the Hon'ble Mr. Justice Mahilosh Majumdar.

14. A notification u/s 6(1) of the said Act was issued by the office of the Land Acquisition Collector and the said notification was published in The "Dainik Basumati" on December 27, 1989. A copy of the said publication dated December 27, 1989, has been annexed as Annex. "B" to the supplementary affidavit. In the said supplementary affidavit, the Petitioner had also challenged the said notification u/s 6 of the said Act, on the following grounds:

(a) The notification u/s 4 of the Land Acquisition Act, 1894, is bad and all subsequent proceedings are also bad in law.

(b) The disposal of the objections filed u/s 5A of the Land Acquisition Act, 1894, is bad for rejection of the grounds taken in the objection to challenge the notification u/s 4 of the said Act dated September 9, 1983.

(c) The said declaration, u/s 6(1) of the said Land Acquisition Act, 1894, is bad for "inordinate delay" and is liable to be and should be quashed.

(d) The said declaration u/s 6(1) of the said Land Acquisition Act, 1894, is bad for the same reasons as Section 4 notification was bad.

(e) No award was given u/s 6 of the said Act.

(f) No award was passed u/s 6 of the said Act.

15. Mr. Samaraditya Pal, learned Advocate appearing on behalf of the Petitioner, at first placed the aforesaid facts from the writ petition and the supplementary affidavit, referred to hereinabove and submitted that both the original notification u/s 4 of the Act I of 1894 dated December 17, 1982, and the subsequent declaration dated December 27, 1989, passed u/s 6(1) of the Act I of 1894, was bad in law and are liable to be set aside.

16. Mr. Pal submitted that this Court by order dated March 7, 1984, having directed the Respondents to dispose of the objections of the Petitioner, u/s 5A of the Act I of 1894 and the Respondents not having disposed of the said objections after giving hearing to the writ Petitioner, no legal declaration could be passed u/s 6(1) of the Act, as it has been done in the present case.

17. In this context, Mr. Pal has referred to the chequered career of this case, which is stated below:

Originally, on or about April 10, 1948, possession certificate was issued by the Land Acquisition Collector, in Requisition Case No. 113 of 1948 in respect of premises Nos. 27/1A and 27/1B, Dehi Serampore Road (disputed premises) under the provisions of West Bengal Premises Requisition and Control (Temporary Provisions) Act of 1947 (hereinafter referred to as Act V of 1947).

The Petitioner, obtained information slip on June 29, 1978, from the office of the Land Acquisition Collector and the Petitioner was informed that the building in the south-west corner of the said premises was not requisitioned. This fact has been stated in para 5 of the writ petition and corroborated by Annex "C" An agreement of tenancy was executed between the Petitioner and the Respondents Nos. 3 and 4 on December 20, 1979, and the Petitioner became "a tenant" in respect of the disputed premises at a monthly rental of Rs. 550 with a liberty to make additions and alterations. This fact has been stated in paras. 2, 3 and 4 of the writ petition and corroborated by Annex, "A" to the writ petition.

18. Mr. Pal further submitted that from 1948 to 1982, i.e. for 34 years, nothing has been done by the Respondents, after taking possession for use of the land permanently for the "alleged public purpose", for which the premises was "requisitioned" under the provisions of Act I of 1894 after 34 years.

19. Mr. Pal submitted that the Petitioner was granted permission to repair by the Building Surveyor, Calcutta Corporation, as far back on October 5, 1982, and thereafter repair was made in his tenanted portion and water connection was made upon payment of requisite charges.

20. It has been submitted by Mr. Pal that after 34 years the State Government has arisen from slumber and decided, a notification u/s 4 of the Act I of 1894 should be issued for acquiring the land, as per Annex. "G" to the writ petition, for the alleged purpose.

21. Immediately after getting the said notification u/s 4 of the Act I of 1894, the writ Petitioner filed an objection, as stated earlier, and at that stage the present writ petition was moved before this Court on February 1, 1984, whereupon on March 7, 1984 after delivery of a short judgement Her lordship Mrs. Khastagir J. had issued Rule and granted interim order, which has been quoted above.

22. Mr. Pal further submitted although this Court specifically directed the Respondents to hear the objections of the writ Petitioner, filed u/s 5A of the Act and also directed to consider, whether alternative land was available and the Petitioner's premises could be released from the purview of acquisition, nothing has been done, taking the technical plea of discharge of the Rule and vacation of the interim order by order dated February 7, 1989, for a temporary period, which has been quoted earlier.

23. In the meantime, the purported declaration u/s 6(1) of the said Act was published in the "Dainik Basumati" on December 27, 1989. It is the specific case of the writ Petitioner that the declaration u/s 6(1) of the said Act has not been gazetted in accordance with law. The Petitioner received xerox copy of the "Dainik Basumati", containing the purported declaration on January 19, 1990. Thereafter, on February 9, 1990, the order of dismissal of the writ petition was recalled.

24. As such, Mr. Pal submitted that the entire acquisition proceedings including the notification u/s 4 and the declaration u/s 6(1) of the said Act, are liable to be set aside for the following grounds:

25. Firstly, he submitted that no public purpose has been stated in the original notification u/s 4 of the Act, which has been passed in the year 1982, inasmuch as, the objections u/s 5A of the said Act having been directed to be disposed of, no such objection having been disposed of, the subsequent declaration passed u/s 6(1) of the said Act, is a nullity in the eye of law.

25A. According to Mr. Pal, such declaration u/s 6(1) of the said Act is "conclusive" in view of the observations made in the case of Smt. Somavanti and Others Vs. The State of Punjab and Others, Referring to the aforesaid decision of the Supreme Court, Mr. Pal submitted that the declaration is not a legal declaration, as it was not made in accordance with law and, as such, the said declaration is liable to be set aside by this Court.

25B. In this connection, Mr. Pal further added that the purported declaration u/s 6 of the said Act was void.

25C. In any event, since there could not be any declaration u/s 6 and in accordance with law, the acquisition proceeding have become void, by reason of the provisions of the said Act, because of the "unreasonable and protracted delay" and laches.

25D. He further added non-disposal of the objections u/s 5A have also rendered the entire acquisition proceedings void.

25E. Lastly, he submitted, that the acquisition proceedings having been initiated at the instigation of the landlords, being Respondents Nos. 3 and 4, to put an end to the tenancy of the Petitioner, the same cannot be upheld in the eye of law. According to Mr. Pal in the instant case the power of eminent domain has been exercised for "oblique or collateral purposes".

26. In support of this branch of submission Mr. Pal has placed strong reliance on the judgment delivered by me in the case of M/s Adarsh Properties v. First Land Acquisition Collector 1987 (2) C.H.N. 129. In the said case it has been observed by this Court that in order to forestall a decree of eviction passed by the Civil Court, the power of eminent domain, should not be exercised to bypass the order passed by the competent Civil Court.

27. The allegations of mala fide made against the Respondents Nos. 3 and 4 not having been controverted, by the said Respondents, the allegations goes unchallenged and the Court is to assume adverse presumption that the allegations are proved. The denial made by Sunil Kumar Banerjee, in his affidavit affirmed on February 11, 1988, on behalf of the State, being a bare denial, no value should be given to such bare denial, as the said officer could not have any personal knowledge about the said allegations.

28. Regarding formation of requisite opinion, relating to public purpose, Mr. Pal submitted that the condition precedent for issuing a valid notification u/s 4 of the Act is the satisfaction of the Government that the land is needed for the public purpose and, as the said condition precedent has not been fulfilled in the facts of the present case, the entire acquisition proceeding is liable to be set aside.

29. In this connection, Mr. Pal placed strong reliance on the observations of this Court in the case of Paresh Nath Nundi and Another Vs. State of West Bengal and Others, wherein the Division Bench of this Court, presided over by P.B. Chakraborty, C.J. (as His lordship then was), laid down that the principle that when the existence of public purpose is challenged "the Court must consider whether there is actual need for accommodation of the person concerned and (ii) whether the need will be met by requisition of the particular house or flat."

30. If the principles laid down by the Division Bench in the aforesaid case of Paresh Nundy v. State of West Bengal (Supra), may be applied in the facts of the

present case, only one conclusion is arrived that the land was not actually needed for the "public purpose", which would be evident from the following reasons:

(a) Although a portion of the premises Nos. 27/1A and 27/ 1B, Dehi Serampore Road, had been requisitioned in 1948 for the purpose of hostel accommodation for students of the the Calcutta National Medical College and Hospital, the tenanted premises of the Petitioner was not affected by such requisition, This is evidenced by the information slip issued by the office of the Land Acquisition Collector.

(b) Except a building covering about. 8 cottahs of land the requisitioned premises comprised about 40 cottahs of land, which has been lying vacant, ever since the requisition and till today.

(c) The "public purpose" alleged in the notification u/s 4 obviously implies that there is a shortage of space in running the Hospital and, as such, land was required in or around the areas.

31. This is belied by the history of the case, the conduct of the Respondents, as well as the slate of pleadings.

32. The property has been in the possession of the Government for 34 years and yet nothing was done for utilization of an inch of this property for any, purpose connected with the Hospital or hostel.

33. The inaction of the state for three decades betrays the assertions of any necessity for "a public purpose".

34. Mr. Pal further submitted that the allegations made in para 14 of the writ petition have not been properly dealt with by the Respondents in para 13 of the affidavit-in-opposition and only a bare denial has been pleaded in dealing with the said allegation.

35. Therefore, according to Mr. Pal, the purported notification u/s 4 and the declaration u/s 6(1) of the Act cannot be sustained in law for the following reasons:

(i) The condition precedent for a valid declaration u/s 6 is the satisfaction of the Government after consideration of the report made by the Collector u/s 5A of the Act.

36. Since the objection filed by the Petitioner was not disposed, of by the concerned authority, the report, if any, u/s 5A cannot be a due and proper report and, therefore, the condition precedent has not. been fulfilled and, as such, consequently the "satisfaction" required to be arrived at u/s 6 before making of declaration was non-existent in the facts of this case.

(ii) In this case, admittedly, no declaration has been gazetted as required by Sub-section (2) of Section 6.

(iii) The publication in one newspaper, instead of two newspapers as required by Sub-section (2) of Section 6 makes the declaration invalid, the word "shall" in Sub-section (2) is to be construed as mandatory by this Hon'ble Court.

37. The ground of mala fide exercise of power had been submitted by Mr. Pal, may be set down hereunder:

(a) In paras. 15 and 16 of the writ petition the case of mala fide have been clearly pleaded, i.e., the acquisition proceedings were initiated at the behest of the landlords to get rid of the statutory provisions of the West Bengal Premises Tenancy Act. 1956. These paragraphs had been dealt with in Para 13 of the affidavit-in-opposition which contains a bare denial.

(b) Significantly, private Respondents Nos. 3 and 4 (landlords) have not filed any affidavit-in-opposition denying these statements. Therefore, the allegations of mala fide not being controverted by the real person against whom it is alleged and not being effectively denied by the State Respondents, should be considered to be established. In this connection, Mr. Pal referred to the case of S. Pratap Singh Vs. The State of Punjab, relevant para. 14.

(c) More significantly, the private Respondents landlords did not file any objection u/s 5A of the said Act.

38. Before concluding his submission, Mr. Pal referred to the case of Howrah Mills Ltd. v. State of West Bengal 1988 (I) C.H.N. 367 affirmed in appeal by Monoj Kumar Mukherjee (as His lordship then was) and Altamas Kabir JJ. in the case of the Remington Rand of India v. Howrah Mills Co. Ltd 1991 (I) C.L.J. 295.

39. Mr. Kanak Kumar Chatterjee, learned Advocate, on the last date of hearing of the writ petition, i.e. on March 12, 1992, submitted written notes of submissions filed on behalf of the added Respondent No. 7, i.e. The Principal, National Medical College, Calcutta, for which "necessary leave", was granted by me, on March 4, 1992, to file written submission in addition to the affidavit-in-opposition affirmed by Sunil Kumar Banerjee, on behalf of the Respondent on February 11, 1988, through Mr. D.P. Majumdar. Placing written notes of submission Mr. Chatterjee submitted as follows:

(a) The land in question under acquisition was absolutely needed for a public purpose, namely, for the use of the National Medical College, Calcutta, and its attached teaching Hospital (Chittaranjan Hospital).

(b) The schedule land is subject to L.A. proceedings No. 13772 L.A. (2)-3H-1/79 dated December 17, 1982, under Act 1 of 1894 and is bounded on the north by C.I.T. Road, east by Delhi. Scrampore Road and premises No. 27, Dehi Scrampore Road, south by premises Nos. 24 and 26, Dehi Scrampore Road and on the west by Sundari Mohan Avenue. The only communication from the plot under acquisition to the Calcutta National Medical College and Hospital is along the Sundari Mohan Avenue and there is no other common passage connecting the land to the Hospital to the south.

(c) Upon receiving a copy of the Rule issued by Mrs. Padma Khastagir J. dated March 7, 1984, in view of the prayer of the writ Petitioner dated November 3, 1988, the writ Petitioner and his father were actually heard by the Principal, Calcutta National Medical College, in presence of other members of the Faculty.

40. It transpires that the question of tenancy and possession of certain lands, in the precincts or any part of the land under acquisition by Shri Dugar, the writ Petitioner, were based on flimsy pleas. Minute of the discussions held on January 5, 1989, is set out below:

Without prejudice to the legal position of the case a hearing was conducted by Prof. P.K. Mukherjee, Principal C.N.M.C., today January 5, 1989, at 11-30 a.m. in presence of Prof. N.K. Pal Head of the Deptt. of Surgery Prof. S.M. Sen. Head of the Deptt. of Anatomy and Sri P.K. Sen, Secretary, C.N.M.C. All the relevant and connected papers including the site plan for acquisition were discussed. The objections raised by Sri Dugar were heard for consideration as per order of the Hon'ble High Court which are as follows according to him:

(1) Sri Dugar prays: "The small building situated in the south-west corner of premises No. 27/1A, Dehi Serampore Road, is my tenanted building was never under Calcutta National Medical College and it is also clear from the possession certificate issued by the Land Acquisition Collector and signed by the C.N.M.C. Deshbandhu Medical Hostel which is specifically mentioned excepting the small building in the south-west corner of the premises No. 27/ 1A, Dehi Serampore Road. It is also clear from the information slip issued by the Land Acquisition Collector in the year 1978 that the small building in the south-west corner of the premises No. 27/1A, Dehi Serampore Road, was not included in the acquisition or requisition proceedings. In the circumstance, I request to please vacate my mentioned small building and hand over peaceful vacant possession of the same.

(2) I also request to please pay rent for this small building used by C.N.M.C. in the last 5 years. I also request to please return our articles and materials taken away as per Police report submitted in Beniapukur P.S. in the year 1982-83. This is without prejudice to our rights and contentions in the matter pending before the Hon'ble High Court or any other Court.

(3) It was a residential tenancy. My two darwans were there. We have got the sanctioned plan in the backside of land to have a residence for four-storeyed building. We applied for telephone and water supply. We obtained the water supply line. We got the repairing permission from Calcutta Corporation in the year 1982 and got the premises repaired at our cost.

Sd/- Kanak Kumar Dugar, 5.1.89

Sd/- Sohan Lal Dugar, 5.1.89

41. Mr. Chatterjee further submitted that the Calcutta National Medical College and Hospital was founded in 1948. and fully acquired by the Government in 1967 with all its assets and liabilities. It was found necessary to locate land, in the

vicinity for expansion of the Hospital under the regulations of the State Government and the yard stick of the Medical Council of India.

42. Presently, there is an outstanding proposal for establishment of a Cobalt Therapy Unit for Cancer patients. There is acute dearth of space in other branches of Surgery like Orthopaedics, Urology, Neurology and the other chief discipline of Ophthalmology. With increasing statistics of cancer victims and in view of the period administratively needed for acquisition and actual establishment of the unit and early disposal of the case in favour of the Government is essential. It may not be out of place to mention that the land under acquisition is suitably placed to avoid radiation hazards to neighbouring residence.

43. He further submitted that AIDS is another increasing menace. The Government is committed to establish AIDS detection and treatment centres in all the hospitals. The present arrangement here at the cost of paraclinical teaching rooms cannot be considered even an excuse for the full-fledged unit. Full commission is waiting. Replacement of the major parts of the Surgery department in appropriate situation in the land under acquisition is considered essential for the purpose of salvaging accommodation for full-fledged AIDS treatment centre.

44. Mr. Chatterjee further submitted that the present arrangements in the Hospital is practically no more than what have been inherited from the ex-management. Thus, the Blood Bank is also completely unsatisfactory under W.H.O. specification which may also find a place in the existing building salvaged in the above way.

45. He further submitted that the 47 cottahs of land under acquisition described above would serve in a nominal way towards the long awaited venture of expansion of the Hospital according to the standards and any commercial or residential purposes if delayed along will be at the cost of public interest, the delay already taken place has been injurious and also will risk the proposed dwellers the hazards of radiation and the Government will have to compensate every now and then.

46. Mr. Chatterjee further submitted from the written notes that the writ Petitioner does not reside in the suit premises nor he has any physical possession, in any part of the aforesaid land, but he resides at 14/2, Old China Bazar Street, Calcutta - 1, and also he has his other residence at P-12, New Howrah Bridge Approach Road, Baiju Chawk, 6th floor, Calcutta. The writ Petitioner wants the aforesaid land in question for making a multi-storied residential complex purely for commercial and business purpose.

47. On being questioned by the Court, Mr. Chatterjee, however, could not satisfy the Court about the reasons for delay in not utilising the land, which has already been in possession of the Government since 1948, i.e. for more than 34 years ago.

48. Mr. Chatterjee, however, also could not satisfy the Court with any sufficient reasons as to why in spite of having possession of the rest of the area (which is not covered by the notification), the said lands were not properly utilise for any alleged public purpose, namely. Cobalt Therapy Unit for cancer patients and - other branches of Surgery like Orthopaedics, Urology, Neurology and the other chief discipline of Ophthalmology.

49. Therefore, it has now become necessary for this Court to adjudicate the following issues, which come up for disposal. Firstly, whether the premises No. 27/1A and premises No. 27/1B, Dehi Serampore Road, having been requisitioned, under the prevision of the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 (V of 1947), the possession having been taken as back on April 10, 1948, the Government was justified in not utilising the same for more than 34 years ?

Secondly if the permanent utilisation of the land was required for any "public purpose", whether steps should have been taken to acquire the said land the provisions of the Land Acquisition Act, 1894 (I of 1894), or the provisions of the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 (V of 1947), as it was done, in the facts of the present case, in view of the observations of the Supreme Court, in the case of H.D. Vora Vs. State of Maharashtra and Others, as well as in the case of Jiwani Devi Paraki Vs. First Land Acquisition Collector, Calcutta and Others, wherein the Supreme Court has observed that if the need is of "perennial and permanent nature", the appropriate Government would be entitled to take recourse to the provisions of Land Acquisition Act, 1894 (I of 1894) and not temporary transitional legislation, viz. Act V of 1947, as in the present case.

Thirdly, this Court has to decide as to whether the writ Petitioner had been able to make out a case of mala fide exercise of power for an oblique motive for acquiring the land with structure at the behest of private Respondents Nos. 3 and 4, being landlords, as alleged in paras. 15 and 16 of the writ petition and not being controverted by the private Respondents, although the tenancy of the Petitioner was not covered by the earlier order of requisition under Act V of 1947.

Lastly, this Court is to decide whether the Government was justified, in issuing Declaration, u/s 6(1) of the Act I of 1894, without disposing of the statutory objections submitted on behalf of the writ Petitioner u/s 5A of the said Act and, in particular, in view of the directions given by Mrs. Padma Khastagir J. dated March 7, 1984.

50. Let me now take up the issues chronologically for disposal on the basis of the pleadings, adduced by the parties, one after another.

51. On the basis of the pleadings, it appears before this Court that although possession of the land in question having been taken as far back in 1948, no steps have been taken either by the requiring body, viz., Calcutta National Medical College or by the State Government for utilisation of the land for any

alleged "public purpose", viz., for the use of the National Medical College, Calcutta, and its attached teaching Hospital (Chittaranjan Hospital), which would be evident from the Notification dated December 17, 1982, issued u/s 4 of the Act I of 1894, which is Annex. "G" to the writ petition.

52. In view of the observations of the Supreme Court in the case of H.D. Vora v. State of Maharashtra (Supra) and in the case of Jiwani Kumar Paraki v. First Land Acquisition Collector, Calcutta (Supra), if the land is permanently needed for any continuing purpose, the Government is entitled to take recourse to the provisions of Land Acquisition Act, 1894 (I of 1894) only, and not under the provisions of any transitional legislation, viz., Act V of 1947, as it was taken recourse to in this case.

53. In the facts of the present case, it appears that although the land was likely to be needed for a continuing public purpose, the initial order of requisition passed as far back in the year 1948, suffers from inherent infirmity for non-formation of requisite opinion and cannot be sustained in law.

54. Be that as it may, since in the year 1982, the steps have been taken for acquisition of the land, by issuing notification u/s 4 of the Act 1 of 1894 dated December 17, 1982, the said question of exercising power under Act V of 1947, in the year 1984 and final adjudication of the case in the year 1982, has almost become academic and, as such, this Court is not called upon to decide the said point, but inclined to pronounce its judgment on the validity of the notification u/s 4 of the Act I of 1894 and the declaration under, Section 6(1) of the said Act.

55. In this context, this Court is of the view that since objections of the writ Petitioner having been filed u/s 5A of the Act and Mrs. Padma Khastagir J. by her lordship's order dated March 7, 1984, having directed the Respondents, namely, Land and Revenue Department, to dispose of the said statutory objections, particularly, taking into consideration of the relevant fact whether any alternative land was available which could be acquired for the purpose of National Medical College, Calcutta, and the said objection not having been disposed of by the concerned Respondents, the entire acquisition proceedings, starting from issuing notification u/s 4 and consequent declaration u/s 6(1) of the said Act, are liable to be quashed.

56. In passing this direction, this Court is not unmindful of the observation of the Supreme Court in the case of Somawanti v. State of Punjab (Supra) that a legal declaration u/s 6 cannot be challenged in the court of law, as the same is conclusive, but the factum of conclusiveness is liable to be disturbed if there is no legal declaration and the declaration u/s 6 is issued, without disposing of the objections raised u/s 5A of the said Act.

57. Further, at the time of resuming hearing, this Court asked Mr. Kanak Kumar Chatterjee, learned Advocate, who ultimately appeared for the State, as to whether the purpose of National Medical College, Calcutta, could be served without disturbing the tenancy portion of the writ Petitioner as it will be evident

from the pleadings of this case that no steps have been taken since the passing of the order of requisition as far back in 1948 for actual utilisation of the area which was under the purview of the requisition in the year 1948 and was under the acquisition proceedings in 1982.

58. Since the Principal, Calcutta National Medical College, intended to be added as Respondent, the said prayer was allowed by this Court and this Court gave chance to the said Respondent to put forward their stand before this Court, in addition to the affidavit-in-opposition filed on behalf of the Respondents.

59. From the written submissions submitted by Dr. P.K. Mukherjee, Principal, Calcutta National Medical College, it appears before this Court that there is, no "definite public purpose" and there is no such proposal before the requiring body for setting up of Cobalt Therapy Unit for Cancer patients and other branches of Surgery like Orthopaedics, Urology, Neurology and the other chief discipline of Ophthalmology. At least at the time of issuing notification, u/s 4, in 1982 there were no such materials before the State Government, as such, the submissions of the requiring Body should be left out of the consideration of this Hon'ble Court.

60. It appears from the written submission that the said Principal has come forward with some hypothetical claims for meeting the future contingency which might be required by the said Hospital in the 21st Century, as according to this Court, the land having been made available since 1948, under the order of requisition, no utilisation of the said land and structure has been made till the date of passing of the notification in 1982 or even today.

61. In my view, this Court has to accept the challenge of the writ Petitioner, in particular, when the private Respondents had not come forward to dispute the allegations of mala fide exercise of power for acquisition of the land and structure which was now within the purview of the requisition proceedings, as referred to hereinabove, in this judgment.

62. Before concluding, this Court is of the view, although the writ petition was dismissed and the interim order was vacated by Mahitosh Majumdar J. (as His lordship then was) by his order dated February 9, 1989, but after the restoration of the Rule, the Rule and the interim order was revived on February 9, 1990, and as such, it was not open for the State Respondent not to hear and dispose of the objection of the writ Petitioner submitted u/s 5A and pass a purported declaration u/s 6(1) of the said Act.

63. In my view, the condition precedent for issuing a valid declaration u/s 6 of the said Act, being the requisite satisfaction of the State Government, after consideration of the report made by the Collector u/s 5A of the Act and since the objections filed by the writ Petitioner was not disposed of by the concerned authorities in terms of the directions passed by this Court on March 7, 1984, the report, if any, filed u/s 5A could not be considered as "a proper report" and, therefore, the condition precedent not having been fulfilled, the entire Declaration is liable to be set aside.

64. Further, in my view, since the declaration has not been published in the Official Gazette as required by Sub-section (2) of Section 6, the said Declaration can have no effect, as the said provision is mandatory.

65. In that view of the matter, the writ petition is entitled to succeed and the Rule is made absolute.

66. The Notification u/s 4 and Declaration u/s 6(1) of the Act I of 1894, covering a piece of land, comprising premises Nos. 27/1A and 27/1B," Dehi Serampore Road, Calcutta, and a common passage measuring more or less 0.2535 of a hectare (p. 7006 of an acre), which is in possession of the Petitioner, is quashed.

67. Let a writ in the nature of mandamus be issued directing the respondents to cancel the impugned notification dated December 17, 1982, and the consequent Declaration u/s 6(1) of the Act 1 of 1894.

68. The Respondents, however, will be entitled to utilise the remaining portion of the land which is not covered by the tenancy of the writ Petitioner, and in accordance with law.

69. There will be no order as to costs.

70. Let xerox copy of this judgment be supplied to the learned Advocates of both the parties, on usual undertaking.