
(1975) 03 CAL CK 0024
In the Calcutta High Court
Case No : Matter No. 264 of 1966

P.K. Shaikh

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 04-03-1975

Acts Referred:

Calcutta Improvement Act, 1911 — Section 43(2)
Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 114
Land Acquisition Act, 1894 — Section 16, 6A, 9(3)

Citation : AIR 1976 Cal 149

Hon'ble Judges : A.N. Sen, J

Bench : Single Bench

Advocate : T.P. Das, Tapas Banerjee, for the Improvement Trust, for the Appellant; C.K. Roy, for the State and Land Acquisition Authorities, for the Respondent

Judgement

A.N. Sen, J.—The petitioner obtained the present rule and also an interim order of injunction on the 13th May, 1966.

2. Calcutta Improvement Trust for the improvement of the City prepared a scheme bearing Scheme No. 103 for widening the approach to the Lindsay Street from the side of Free School Street. The said scheme was published u/s 43 of the Calcutta Improvement Act, 1911 in May, 1963. The said scheme after the necessary formalities had been complied with, met with the approval of the State Government. For the purpose of implementing the said scheme it became necessary to acquire certain properties in Lindsay Street. One of the properties acquired in Lindsay Street is Premises No. 12/8-A Lindsay Street. It appears that premises No. 12/8A, Lindsay Street was a tenanted one and one of the tenants under the owner of the said premises was Mrs. A.E. Morrocco. An award was duly made in the said acquisition proceeding and compensation for acquisition of the said premises was awarded to the owner, to the tenant Mrs Morrocco, to one subtenant under Mrs. Morrocco who was carrying on business under Hie name

and style of Hollywood Tailors. It also appears that premises No. 12/9A, Lindsay Street had also been acquired for the implementation of the said scheme and an award for compensation has been made in favour of persons entitled to compensation for acquisition of premises No. 12/9A, Lindsay Street. No objection has been raised by the owner, the tenant and the sub-tenant with regard to the validity of the acquisition proceeding and the award made in the said acquisition proceeding.

3. The petitioner claims to be a tenant in respect of premises No. 12/8A, Lindsay Street. It is the case of the petitioner that the petitioner is a tenant under Mrs. Morrocco and the petitioner as tenant of Mrs. Morrocco has a tailoring shop in the said premises. In support of the case that the petitioner is a tenant under Mrs. Morrocco in respect of a portion of premises No. 12/8A, Lindsay Street, the petitioner has annexed to his petition rent receipts granted by Mrs. Morrocco to him and also receipted electric bills. It is the case of the petitioner that no notice of any kind was ever served on the petitioner and the petitioner had no knowledge of the acquisition proceeding. The further case of the petitioner is that the petitioner came to know for the first time of the acquisition proceeding and also of the award on the 30th April, 1966 when a police officer came to his shop room and asked him to vacate the shop room on the 11th May, 1966 and deliver vacant possession of the said shop room in his possession to the Board of Trustees of the Calcutta Improvement Trust. The petitioner has made the case in his petition that on being so informed by the police officer the petitioner caused enquiries to be made and was informed by one of the tenants of No. 12/9A, Lindsay Street, viz.. M/s. M. N. Dey & Co. that the said premises had been acquired and notices of such acquisition had been served on the tenants. The petitioner has further alleged in his petition that the said M/s. M.N. Dey and Co. also informed the petitioner that Mrs. Morrocco under whom the petitioner was a tenant had in her petition dated 11th December, 1964 to the respondent No. 3, the Second Land Acquisition Collector, informed him that the petitioner was a tenant under her in the said premises. The petitioner has further stated in his petition that he thereafter proceeded to make various enquiries from the office of the Land Acquisition Collector but the said enquiries were of no use to him. The petitioner has further alleged that the tenant M/s. M.N. Dey & Co. showed to the petitioner the notice dated 30th March, 1966 asking the said tenant to collect the compensation money. The petitioner has alleged in his petition that thereafter on the 4th May, 1966 he again visited the office of the Land Acquisition Collector and on that day he was shown a list of persons who had been served with notices of acquisition and according to the petitioner the petitioner's name was not mentioned in the list. In this writ petition the petitioner has challenged the validity of the order dated the 30th March, 1966 which was shown to him by M/s. M.N. Dey and Co. The petitioner is also challenging the validity of the order in consequence whereof the petitioner is likely to be evicted from the said premises. As I have already noticed the petitioner obtained this rule and also obtained an order of injunction in May, 1966 and by virtue of the order of

injunction the said scheme has so far remained unimplemented and the petitioner and also the other persons in the said premises who have raised no dispute whatsoever with regard to the validity of the acquisition proceeding and the award made in their favour are continuing to be in possession of the said premises.

4. In the petition which was originally filed by the petitioner and on the basis of which the petitioner obtained the rule and the interim order, the principal allegation of the petitioner was that there was a violation of the provisions contained in Sections 4, 6 and 9 of the Land Acquisition Act. Basing his case on the violation of the said statutory provisions, the petitioner challenged the validity of the acquisition proceeding and obtained the rule and the interim order of injunction. In answer to the said petition an affidavit was filed on the 26th July, 1966 by one Sudhansu Coomar Ghakravarti who was the then Deputy Chief Valuer of the Board of Trustees of the Calcutta Improvement Trust. The said affidavit was filed on behalf of the respondent No. 4, the Board of Trustees of the Calcutta Improvement Trust. An affidavit was also filed on the 12th July, 1966 by one Samarendra Nath Das Gupta who happened to be the Second Land Acquisition Collector and the respondent No. 3 in the present proceeding. The said affidavit was filed by Samarendra Nath Das Gupta on behalf of respondents Nos. 1, 2, and 3. In the said affidavits which were filed in July, 1966 contentions were raised that Sections 4 and 6 of the Land Acquisition Act had indeed no application by virtue of the amendment of the said Act introduced by the Calcutta Improvement Act and the acquisition of the said premises was on the basis of a scheme being scheme No. 103 which has been duly published u/s 43 of the Calcutta Improvement Act and in respect of which all necessary formalities have been duly complied with. In the affidavit of the Land Acquisition Collector it was contended that during the time of local inspection and in course of acquisition proceeding the petitioner was not found to be in occupation of any portion of the premises acquired or to have any interest therein and as such no notice was served on the petitioner and it was further stated that all statutory formalities were duly complied with. Though the contention that Sections 4 and 6 of the Land Acquisition Act had no application to the acquisition proceeding in question had been raised as early as July, 1966, yet it appears that no steps had been taken by the petitioner in the matter till April, 1969, when the matter came up for hearing before T.K. Basu, J.

5. It appears that the matter came up for hearing before T.K. Basu, J. on the 28th April, 1969 and on that date the petitioner, appreciating the difficulties in view of the amendments in the Act, asked for leave to take out summons for amendment of the petition and T.K. Basu, J, was pleased to grant leave to the petitioner to take out summons for amending the petition and it further appears that on the 25th September, 1972 an order was made allowing the amendment of the petition. It may be noted that during this entire period the interim order in favour of the petitioner was continuing.

6. By the amendment, the petitioner has sought to challenge the validity of the scheme on the ground that the statutory formalities as required under the Calcutta Improvement Act have not been complied with in the matter of framing the scheme and also in the matter of implementation of the same. The further ground urged has been that the award must also be considered to be bad, as no notice u/s 9 of the Land Acquisition Act has been served on the petitioner,

7. Mr. T.P. Das, learned counsel appearing on behalf of the petitioner has contended that the order in question must be considered to be bad as the necessary provisions contained in Section 43 (2) of the Calcutta Improvement Act have not been complied with and there has been no publication in terms of the provisions contained in the said section. He has further contended that there has also been a violation of the provisions contained in Section 45 (1) (ii) of the Calcutta Improvement Act, as no notice had been served on the petitioner. Mr. Das has argued that as the statutory requirements contained in the said sections have not been complied with, the said scheme and the steps taken for implementing the said scheme must be considered to be bad and illegal and in any event for non-compliance with the said requirements the petitioner was deprived of his right to raise any objections and protests with regard to the said acquisition. It is his argument that as the said requirements were not complied with and as the petitioner did not have any knowledge of the said Scheme or of its publication, the petitioner could not make any representations to the appropriate authorities raising his objections with regard to the said scheme. Mr. Das has next contended that there has clearly been a violation of the provisions contained in Section 9(3) of the Land Acquisition Act. Mr. Das argues that there cannot be any question that the petitioner as a sub-tenant is an occupier of the said premises and the petitioner is, therefore, entitled to be served with a notice u/s 9. According to Mr. Das non-service of the notice on the petitioner is clearly deliberate and wilful. He argues that the Land Acquisition authorities must have been aware that the petitioner was a tenant under Mrs. Morroceo and was in occupation of the said premises and under such circumstances non-service of the notice u/s 9(3) on the petitioner is clearly wilful and is mala fide. It is his argument that the mala fide and wilful act of non-service of the notice u/s 9(3) on the petitioner clearly vitiates the entire acquisition proceedings. In support of his contention Mr. Das has referred to the decision of the Division Bench of this Court in the case of Tara Prasad Chaliha Vs. Secy. of State and Another, and he has placed particular reliance on the following observation at page 472--

"Now, it is well settled that where special provisions are made by the legislature for compulsory acquisition of property belonging to a person, the provisions of the law must be strictly complied with."

8. Mr. Das in this connection has also referred to the following decisions:--

1. Laxmanrao Kristrao Vs. Provincial Government of Bombay and Another, .
2. Mohamadsarif Hakimji Chippa and Another Vs. State of Gujarat and Another, .

3. Shri Mandir Sita Ramji Vs. Lt. Governor of Delhi and Others, .

4. The Land Acquisition Collector Vs. Smt. Parvati Devi, . Mr. Das has argued that the decisions of the Division Bench of this Court in the case of Sri Sukdev Saran Dev v. Raja Nripendra Narayan Chandradhavarjee (1942) 76 Cal LJ 430 and the decision of the Patna High Court in the case of Shivdev Singh Vs. The State of Bihar and Others, are clearly distinguishable as in those cases the non-service of notice u/s 9 was not wilful and according to Mr. Das taking into consideration that non-service of notice u/s 9 in those two cases was not deliberate or wilful, the decision was given on the peculiar facts of those two cases.

9. Mr. C.K. Roy, learned counsel appearing on behalf of the State and the Land Acquisition authorities has submitted that no proper case has at all been made for any order by this Court or for any interference by this Court. He has argued that as in the instant case, the acquisition was for the Calcutta Improvement Trust, Sections 4 and 6 of the Act do not have any application. He has contended that the averments initially made in the original petition on the basis of which the interim order was obtained had therefore no legal basis. He contends that the Land Acquisition Collector comes into the picture after all stages contained in Sections 4 and 6 of the Land Acquisition Act as amended by the Calcutta Improvement Act are over, and the only grievance against the Land Acquisition Collector is non-service of the notice u/s 9. He has argued that in the instant case the Land Acquisition Collector has clearly explained in his affidavit in paragraphs 10 and 11 as to under what circumstances notice u/s 9(3) of the Land Acquisition Act was not served on the petitioner. He argues that in the instant case, taking into consideration the conduct of the petitioner and the facts and circumstances of the case, there is no reason why the statements made by the Land Acquisition Collector in these two paragraphs should not be believed. He has contended that apart from the question of presumption of official acts being done in the regular course, the facts and circumstance of the instant case clearly go to show that the acts have been properly and lawfully done and the statements made by the Land Acquisition Collector in the said paragraphs 10 and 11 are undoubtedly true. It is his argument that there can be no possible reason as to why the Land Acquisition Collector who had served notice on all other persons would not serve notice on the petitioner if he could be found to be in occupation of the said premises. He argues that there has been no grievance from any other person, whether the owner, the tenant, the sub-tenants or any other person interested in the said premises Nos. 12/8A and 12/9A, Lindsay Street as to non-service of the notice. Mr. Roy argues that it is strange and indeed incredible that the petitioner who claims to have been a regular occupier of the said premises, would not know anything about the acquisition proceedings and he would only come to know of the acquisition proceedings from a tenant of premises No. 12/9A. Lindsay Street after the award had been made, Mr. Roy has further argued that in any event non-service of the notice, assuming that the petitioner was entitled to any such notice, does not give the petitioner any right to challenge the validity of the award and to invoke the jurisdiction of this Court.

10. He has argued that non-service of notice does not vitiate the acquisition proceedings and only entitles in appropriate cases a person who has not been served or not duly served with notice to make a claim for compensation. He has drawn my attention to Sections 18 and 19 of the Land Acquisition Act and has commented that these sections provide complete and adequate relief to a person who may feel aggrieved by any award on the ground of non-service, defective service of notice or otherwise of a notice u/s 9(3) of the Land Acquisition Act. It is the submission of Mr. Roy that in facts of the instant case the petitioner was not entitled to any notice u/s 9(3) of the Act and in any event non-service of notice u/s 9(3) does not entitle the petitioner to challenge the validity of the award in this proceeding. He has further argued that there is no question of any mala fides on the part of the authorities concerned. He has argued that there are even no proper averments of mala fides in the petition. He has contended that no possible reasons or grounds have been stated why the authorities concerned would not wilfully or deliberately serve the notice on the petitioner, if the petitioner would be found to be in occupation of the said premises or would be considered to be a person otherwise interested in the said premises. He has fairly stated that if on a consideration of the facts and circumstances of the case the Court is of the opinion that the petitioner is a person who is entitled to notice u/s 9(3) and is entitled to receive any kind of compensation for acquisition of the said premises, the Court may give appropriate directions to the authorities concerned in the matter.

11. Mr. Tapas Banerjee, learned counsel appearing on behalf of the Calcutta Improvement Trust has submitted that this petition should be dismissed in limine on the ground of suppression of material facts and also on the ground of making deliberately false statements in the petition. He has argued that in the petition, the petitioner has made the case that the petitioner had no opportunity of making any representations before the authorities, as the petitioner had no knowledge of the acquisition proceedings. He has further argued that on the basis of the aforesaid averments and also on the basis of the further averments that the petitioner came to know of the acquisition proceedings for the first time from the police officer who came to the petitioner to ask him to vacate the premises, the petitioner moved this Court and obtained the interim order. He has drawn my attention to the written representations made by the petitioner before the appropriate authorities. A copy of the precis of the representations made by persons who had objected to the scheme and its acquisition has been annexed to the report of the Objection Committee, the members of which were Mssrs. S.B. Ray, R.W. Turnbull, B.P. Poddar and K. Sen, Chairman. A copy of the said report along with a copy of the precis of objections has been annexed to the affidavit of Arun Kumar Ghosh affirmed on the 15th day of February, 1974, filed on behalf of the Trust in answer to the amended petition. Mr. Banerjee has also produced the relevant records and has also produced the original of the written representations made by the petitioner. In reply filed by the petitioner in answer to this statement in the affidavit-in-opposition of Arun Kumar Ghosh, there was a

denial by the petitioner and I have to note that when the original was produced in Court, Mr. Das appearing on behalf of the petitioner at the first stage tried to suggest, though rather faintly, that the said document might not be a genuine one. I asked Mr. Das to take proper instruction from his client and also directed Mr. Das to produce his client in Court. Mr. Das later on, I have to observe, very fairly and properly and particularly in view of the fact that the petitioner did not turn up in Court did not press the said contention that the said document is a fabricated one. In any event, I am not at all impressed with the suggestion that the said document may not be a genuine one. I fail to understand why the authorities concerned should try to fabricate this particular document. As I have already observed the Objection Committee consisted of very respectable persons and there can be no possible reason as to why they should fabricate the document or be parties to any fabrication of any document. It is not suggested and it cannot possibly be suggested that any of those persons or any of the officers concerned does have any particular grievance or grudge against the petitioner. On the other hand I have to observe that I am not at all impressed by the case sought to be made by the petitioner in his petition. To my mind it is incredible that the petitioner would not know of the acquisition proceedings if the petitioner had been a bona fide occupier of the said premises. According to the petitioner himself all the tenants in the said premises knew and all other persons in the premises have raised no objection whatsoever to the validity of the award. Their objections and their claims for compensation have been considered and it does not appear that there has been any grievance by any of the other tenants or persons interested in the premises acquired with regard to the acquisition proceedings or the award made. It is also interesting to note that though the petitioner makes a case that he came to know of the acquisition proceedings from another tenant M/s. M.N. Dey & Co. of premises No. 12/9A, Lindsay Street, no affidavit in corroboration of this statement had been filed by anybody on behalf of M/s. M.N. Day and Co. in support of the said allegations made. Before recording my views finally on this aspect and after hearing was concluded yesterday I wanted to give a further and final opportunity to Mr. Das's client to come to Court and to state from the witness box today as to whether the written representations which have been produced by the authorities concerned bore his signature or not, before I proceeded to deliver judgment in the matter. Mr. Das has told me that his client had not been able to come even today, when I started dictating the judgment in Court

12. In the facts and circumstances of this case, I have no hesitation in coming to the conclusion that the petitioner did at all material times know of the acquisition proceedings and the statements that he had made in the petition are untrue and he made those statements deliberately for the purpose of obtaining the interim order. It is not for me to speculate whether the petitioner has been set up by any other persons or the petitioner has moved this Court of his own. It, however, appears that the purpose of the petition to a very great extent has been served. As I have already indicated, the interim order was obtained sometime in 1966

and because of the interim order continuing for these 9 years, no effective steps could be taken for implementing the scheme. I cannot help observing with some regret that the authorities concerned have also not shown due diligence in the matter. Undoubtedly the delay enured to the benefit of the petitioner; and it might have been to his interest to prolong the litigation. The authorities concerned should have been much more diligent in this matter particularly bearing in mind that the large amount of compensation has, as I understand, already been paid to the parties entitled to compensation. In any event, to my mind, there is considerable force in the argument of Mr. Banerjee that on this ground alone, namely, suppression of material facts and obtaining an interim order on the basis of false allegations, this petition should not be entertained and should be dismissed. Though this ground alone is sufficient for the disposal of this application, I shall, however, record my views on the other contentions raised.

13. So far as the grievance of the petitioner that there has been a violation of the provisions contained in Sections 43 (2) and 45 (1) (ii) of the Calcutta Improvement Act is concerned, I am satisfied from the records which were produced before the Court that there has been no violation and the requisite formalities have been complied with. From the records I have to observe that the Calcutta Gazettes containing the necessary publication were missing. Mr. Banerjee, learned counsel on behalf of the Trust, has stated before me that copies of the Calcutta Gazettes are not traceable and he has not been able to procure the same even from other sources.

14. He, however, stated before me that he was prepared to put the officer concerned into the box for proving the fact of publication in the Calcutta Gazette and also for proving that the Gazettes containing the publications are missing and cannot be procured even from other sources. Though the copies of the Calcutta Gazettes could not be produced before me, the facts and circumstances of this case, to my mind, clearly suggest that there must have been due publication in the Calcutta Gazettes in proper compliance with the requirement of the Statute. The publications in the newspapers have been produced before me. Apart from the question that official acts should ordinarily be presumed to have been done properly, in the facts and circumstances of the case, unless there was proper publication in the Calcutta Gazette. I see no point why there should be further publications in the newspapers and unless those publications were there the scheme would undoubtedly not meet with the approval of the Government. So far as notice u/s 45 (1) (ii) of the Calcutta Improvement Act is concerned, the records clearly indicate that the requirements have been fully satisfied, I may incidentally observe that after the introduction of Section 6-A in the Land Acquisition Act by way of amendment there is no question of applying Sections 4, 5-A and 6 of the Land Acquisition Act in the case of acquisition of any property for the purpose of the Calcutta Improvement Trust. To my mind, there is also considerable force in the argument of Mr. Banerjee that there are not even proper averments about the violations of any statutory requirements in the

petition. In any event, I am satisfied that the requirements of the statute have been duly complied with in the facts and circumstances of this case. In the instant case, it is not in dispute that notice u/s 9(3) of the Act has not been served on the petitioner. I have already noted the case of the Land Acquisition Collector as to why no notice on the petitioner has been served. I do not consider it necessary to decide the question whether notice u/s 9(3) of the Act should have been served on the petitioner as, in my view, a decision on this question, in the facts and circumstances of this case, is not really necessary and any adverse decision by this Court may prejudice the claim of the petitioner to get any compensation if he is otherwise entitled in law to claim any such compensation. Even if I proceed on the basis that notice u/s 9(3) of the Act was required to be served on the petitioner and the said notice has not been served on the petitioner, the petitioner in my opinion, is not entitled to any relief in this particular proceeding. In the facts and circumstances of this case I am not at all satisfied that the non-service of the notice on the petitioner, if the petitioner was entitled to any such notice, was either wilful or mala fide. The facts and circumstances of this case clearly go to show that there could not be any question of deliberately or wilfully not serving the notice on the petitioner or suppressing the same from the petitioner and, to my mind, there is no proper averment of any mala fides at all. Non-service of the notice on the petitioner even if the petitioner was entitled to any notice u/s 9(3), will only affect the claim of the petitioner with regard to compensation and in the facts and circumstances of the case non-service of the notice on the petitioner, cannot and does not vitiate the acquisition proceeding and the award. The decision of this Court in the case of Tara Prasad Chaliha Vs. Secy. of State and Another, , to my mind, does not lay down the proposition that non-service of notice on any person entitled to notice u/s 9(3) vitiates the acquisition proceeding or the award. The Court was concerned in that case only with the question of the right of the party who has not been duly served with notice u/s 9(3) to agitate the question of his claim for compensation. The question of validity of the acquisition proceeding, and the title having vested in consequence of the acquisition proceeding, was not in dispute. In the said case the Court has observed at page 473:--

"In the present case there is no question that the property has vested in the Secretary of State. The only question, is whether the claimant has the right to ask the Court to take his evidence as regards the proper compensation to be paid according to the market value. In my judgment, as the provisions of law have not been strictly complied with, it is not possible to apply the penal provisions of Section 25, Land Acquisition Act, in order to prevent him from putting forward his claim before the learned Judge,"

To my mind, the decision of the Division Bench of this Court in the case of Sri Sukdev Saran Dev v. Raja Nripendra Narayan Chandradhvarjee, reported in (1942) 76 Cal LJ 430, is a clear authority for the proposition that non-service of the notice u/s 9(3) does not vitiate the acquisition proceeding or the award and the said decision, to my mind, concludes the Question. The Bench observed at

pp. 434-435:

"Nevertheless, it is clear that the notice was not issued and the only question is whether the failure to do so must nullify the subsequent proceedings to the extent that the Government's title by acquisition would fail.

Considering the scheme of the Act. that the main question that can be agitated by a person to whom notice might be given was merely the amount of compensation, and that any such person still has reserved to him u/s 31 a right to claim from the person actually receiving compensation any amount to which he may consider himself entitled; considering further the difficulties likely to arise if every failure to comply with the details of the proceedings of acquisition is to render them null and void we can see no reason to think that the failure to give this notice must be given such importance that the provisions must be held to be of a highly mandatory character such as that the failure to follow it will render the whole proceedings null and void and inoperative. We are, therefore, unable to agree with the finding of the lower appellate Court on this point."

15. The decision of the Division Bench is binding on me. In view of this decision of the Division Bench it does not really become necessary for me to consider the other decisions which were cited from the Bar. I may only note that the decision of the Patna High Court in the case of Shivdev Singh Vs. The State of Bihar and Others, , on a similar question under Bihar Town Planning and Improvement Trust Act adopts more or less the same view. The Patna High Court has observed at pp. 206-207:--

"In response to notice u/s 9, the only matter which can be agitated before the Collector by any person interested relates more or less to the question of compensation in respect of the land sought to be acquired. The order of acquisition or the act of taking possession cannot be challenged in a reference to Court either u/s 18 or Section 30 of the Land Acquisition Act. This also finds support from the rules as to the amount of compensation provided in Section 25 of the Act. In my opinion, the petitioner, even if not served with a notice u/s 9 of the Land Acquisition Act could claim such compensation, if he was entitled to any, by asking the Collector to make a reference to the Court u/s 18 of the Act. He could do so within 6 months from the date of the Collector's award as provided for u/s 18(2)(b).

I may also observe that on proof of the fact that he was not served with a formal notice u/s 9(3) of the Act or had no notice or knowledge of any proceeding under the Land Acquisition Act, he would not be bound by the period of limitation provided for in Clause (b) of Sub-section (2) of Section 18. If the petitioner is so advised, he may pursue his remedy against his landlord and claim any portion of the compensation money of Rs. 4,4318/25 np. paid to the owner of the premises. But it is clear to me that the proceeding or the award in relation to the acquisition of the premises in question cannot be held to be illegal or void or without jurisdiction for non-service of a notice on the petitioner u/s 9(3) of the

Land Acquisition Act. The Collector's right, and as a matter of that, the right of the Chairman of the Improvement Trust to take possession of the property is consequently not affected."

16. In the result, therefore, the petition fails. The rule is discharged. AH interim orders will stand vacated. There will be no order as to costs. Stay asked for orally is refused.