
(1981) 03 CAL CK 0008
In the Calcutta High Court

Sailendra Nath Mullick

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 26-03-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 141
Constitution of India, 1950 — Article 14, 226
Metro Railways (Construction of Works) Act, 1978 — Section 45
Transfer of Property Act, 1882 — Section 53A

Citation : (1981) 03 CAL CK 0008

Hon'ble Judges : Manash Nath Roy, J

Bench : Single Bench

Advocate : Ranadeb Chowdhury, Bhagavati Prosad Banerjee, Benoy Krishna Rej and Lakshmi Kumar Gupta, for the Appellant; Dilip Kumar Sen, Bidyut Kumar Mukherjee, Amitabha Dutta for Respondent Nos. 3, 4, Arun Prakash Sircar and Tapan Kumar Sengupta for Respondent Nos. 1, 2 and 5, for the Respondent

Final Decision : Allowed

Judgement

Mr. Justice Manash Nath Roy

1. The petitioner is the sole shebait of the deity, Thakur Sri Sri Iswar Dhurjati Mahadeb. It has been claimed that premises No. 36, Balgachia Road, Calcutta (hereinafter referred to as the said premises), including the gardens and buildings, was dedicated by the maternal grand father of the petitioner to the said deity. Admittedly, on or about 8th September, 1972, a notification u/s 4 of the Land Acquisition Act, 1893, (hereinafter referred to as the said Act), was published for the acquisition of the said premises in its entirety excepting certain undefined portion in the middle of the same, for construction of Mass Rapid Transit System. It is also true that thereafter, the petitioner filed an objection u/s 5A of the said Act, claiming, inter alia, amongst others that the notification was bad, improper and void for non-specification of the portions sought to be acquired, duly.

2. Thereafter, on 7th December, 1974, the General Manager of the Metropolitan Transport Project (R), Calcutta (hereinafter referred to as the said Authority), addressed a letter modifying the scheme in question and thereby, releasing the tank, main building and the back portion of the said premises and mentioning that a 16 ft. wide access road from the Belgachia Main Road to the main building, would be provided to the petitioner. The above letter was disclosed by the learned Solicitor to the Central Government, to the petitioner during the pendency of Matter No. 646 of 1973 (Sailendra Nath Mullick v. Union of India & Ors.), through the letter dated 17th February, 1975, so that on further consideration, the said Matter No. 646 of 1973, could be disposed of on or by 18th February, 1975. In fact, the said Rule, which was obtained against the acquisition proceedings and was pending, was disposed of on 17th January, 1975, on the following amongst other terms : -

(a) The question as to whether any excavation work will cause any danger or damage to the main building at the said premises is left for adjudication and decision in any future proceeding, if there be any such occasion.

(b) The respondents would publish immediately notification u/s 38 of the L.A. Act releasing the portion not required for the purpose according to the modified scheme.

(c) The said order would not prejudice the petitioner to take any step in accordance with law or to raise any contention if the petitioner is of the opinion that any work on the part of the respondents would threaten the security or cause any damage to the main building.

(d) The rule was disposed of on the basis of the modification in the scheme contained in the letter dated 17th February, 1975 written by the Solicitor for the Respondent No. 3 annexing a copy of the letter dated 7th December, 1974 of the C.M., M.T.P. (N). The disposal as aforesaid, was by consent and on the basis of the consent to the petitioner, as appeared from the order is Annexure D to the petition as amended, by the said Authority. The text of the whole order as made and as indicated above, has been annexed in Annexure "A" to the petition as amended. The learned Judge making the said order also directed immediate publication of the necessary notification u/s 38 of the said Act.

3. It has been stated further that the said Authority, on consideration of the matter, decided to provide with 16 ft. wide access, direct from the Belgachia Main Road to the building in question, to avoid any further litigation. In fact, it appeared that the petitioner wrote a letter on 29th August, 1979 to the General Manager of the said Authority, pointing out therein about providing permanently, 18 ft. wide passage, for facilitating his access to the building in question. In fact, it also appeared from the letter in question that the petitioner asked for 20 ft. wide access, directly from Belgachia Main Road to the building in question, when the said Authority according to the petitioner agreed to provide a 16 ft. wide access. In fact, it was claimed by the petitioner, that the said Authority, on

reconsideration, had agreed to provide for a 18 ft. access, instead of 20 ft. The relevant statements as aforesaid, have been denied by the said Authority, claiming them to be incorrect. It has been stated that the terms of compromise as was done or filed in the proceedings, was amongst others to make a provision for a 4 meter wide road and as such, the question of providing a 18 ft. wide passage did not arise at all.

4. After this, a declaration u/s 6 of the said Act was made on 14th July, 1975. It has been claimed that the respondents concerned, without issuing the notification u/s 38, for releasing the portions, not required for the acquisition, were taking steps to take over possession and in such circumstances, Civil Rule No. 4968 (W) of 1977, with the corresponding interim order was obtained on 13th September, 1977.

5. The said Rule was disposed of on 18th December, 1978, on the basis of terms of a compromise as filed and those terms amongst others were: -

(a) The respondents were directed to exclude portion shown in the re and marked "D", D1 and "E", "E1" on plan No. 243-78 in front of the premises for facilitating the access of the petitioner to the premises in question.

(b) The respondents were further directed to provide permanently a 4 meter wide road as shown on the said plan upto the premises in question. The said access road would be in the M.T.P's land over which the petitioner and other users would have common right.

(c) The respondents would provide the petitioner with access upto the premises from Belgachia road by some make shift arrangement for use of the petitioner during construction works.

All interim orders are vacated. There will be no order as to costs.

The terms of the order as made, were as under : -

Mr. B. P. Banerjee and

Mr. Tapan Kumar Pal for Petitioner.

Mr. T. K. Sengupta for Respondent Nos.1 and 2

Mr. S. Pal for Respondent No. 4.

It appears that all parties have appeared before me. The learned Advocates appearing before me have pursued the agreed terms. I direct such terms to be kept in the record and have the Rule disposed of in terms of the same. Let the terms as filed, do form part of the order. As arguments, as mentioned hereinafter, were advanced by Mr. Chowdhury, on the binding nature of the same, on the parties to the proceedings.

6. The present Rule, with the corresponding interim order, was obtained on 22nd November, 1979. By the interim order, it was directed that the proceedings for

payment of compensation under the said Act, payable with respect to the said premises, by stayed till the disposal of the rule and the Respondent No. 4, viz the, General Manager of the said Authority, should issue a notice to the petitioner before the commencement of the work near the plinth of the said premises. The prayers in the original petition and after amendment, which would be of relevant consideration, on the basis of the arguments as advanced by the learned Advocates of the parties, were to the following effect: -

(a) ...A declaration that the provision of section 45 of the Metro Railways (Construction of Works) Act, 1978 is, ultra vires, the provisions of Article 14 of the Constitution of India.

(b) ...A writ in the nature of Certiorari directing the Respondent Nos.1 to 4 to send up to this Hon'ble Court the entire records including the proceedings for determination of compensation under the provisions of the Land Acquisition Act, 1894 for quashing the same.

(c) ...A writ in the nature of Mandamus commanding the Respondent Nos. 1 to 4 not to proceed with any work in or around the said premises No. 30, Belgachia Road so as to endanger the safety and security of the said premises and/or inhabitants thereof in any manner whatsoever.

(d) ...A writ in the nature of Mandamus directing the Respondents to determine the compensation and the amounts payable in respect of the premises No. 36, Belgachia Road, Calcutta under the provisions of the Metro Railways (Construction of Works) Act, 1978 and not to determine the amount of compensation under the provisions of the Land Acquisition Act in respect of the acquisition of land and portion of building in the premises No. 36, Belgachia Road and to determine and pay all consequential loss and injury and or damage for undertaking the said construction work under the said scheme and/or project payable under the Metro Railways, (Construction of Works) Act, 1978.

(e) ...A writ in the nature of Prohibition prohibiting the Respondent Nos. 1 to 4 from undertaking any work which may endanger the safety and security of the premises No. 36, Belgachia Road, Calcutta;

(f) ...A Rule in terms of prayers (a), (b) and (c) as above.

(g)...Ad interim order of injunction restraining the Respondent Nos. 1 to 4 from (i) proceeding with the determination of the compensation payable in respect of the premises No. 36, Belgachia Road except in the manner in conformity with the provisions of Metro Railways (Construction of Works) act, 1978 and/or not proceeding under the provisions of Land Acquisition Act and (ii) restraining them from undertaking any work which may endanger the safety and security of the main building situated at 36, Belgachia Road and to proceed with the work in such a manner so that no damages and loss is caused to the premises No. 36, Belgachia Road pending disposal of the Rule.

(h) ...Pass such further order or orders as your Lordship may deem fit and proper.

7. The prayers after amendment were to the following effect: -

(a) A declaration that the provision of section 45 of the Metro Railways (Construction of Works) Act, 1978 is ultra vires the provisions of Article 14 of the Constitution of India.

(b) A writ in the nature of Certiorari directing the Respondent Nos. 1 to 4 to send up to this Hon"ble Court the entire records including the proceeding for determination of compensation under the provisions of the Land Acquisition Act, 1894 for quashing the same.

(c) A writ in the nature of Mandamus commanding the Respondent Nos.1 to 4 not to proceed with any work in or around the said premises No. 36, Belgachia road so as to endanger the safety and security of the said premises and/or inhabitants thereof in any manner whatsoever;

(d) A writ in the nature of Mandamus directing the Respondents to determine the compensation and the amounts payable in respect of the premises No. 36, Belgachia Road, Calcutta under the provisions of the Metro Railways (Construction of Works) Act, 1978 and not to determine the amount of compensation under the provisions of the Land Acquisition Act in respect of the acquisition of land and portion of building in the premises No. 36, Belgachia Road and to determine and pay all consequential loss and injury and or damage for undertaking the said construction work under the said scheme and/or project payable under the Metro Railways, (Construction of Works) Act, 1978;

(e) A writ in the nature of Prohibition prohibiting the Respondent Nos. 1 to 4 from undertaking any work which may endanger the safety and security of the premises No. 36, Belgachia Road, Calcutta;

(f) A Rule in terms of prayers (a), (b) and (c) as above;

(g) Ad interim order of injunction restraining the Respondent Nos. 1 to 4 from (i) proceeding with the determination of the compensation payable in respect of the premises No. 36, Belgachia Road except in the manner in conformity with the provisions of Metro Railways (Construction of Works) act, 1978 and/or not proceeding under the provisions of Land Acquisition Act and (ii) restraining them from undertaking any work which may endanger the safety and security of the main building situated at 36, Belgachia Road and to proceed with the work in such a manner so that no damages and loss is caused to the premises No. 36, Belgachia Road pending disposal of the Rule; and pass such further or other order or orders as to your Lordship may deem fit and proper.

8. The interim order as made was modified on 8th September, 1960. But such order was recalled on 8th December, 1980 and since it was fault, considering the issues involved, that the mater should be heard and disposed of early, the same was fixed for an early hearing.

9. In the proceedings, there has been series of affidavits and supplementary

affidavits. The main affidavit-in-opposition, which is dated 30th January 1980, has been filed on behalf of the Respondent No. 4, the General Manager of the said Authority, by Shri Govind Narayan Phadke the Additional Chief Engineer. He, apart from denying the material allegations in the petition, has not only disclosed the relevant plan, but has also claimed that steps in the matter, have been taken, in terms of the agreement, on the basis of the agreed order dated 18th December, 1980, as made in Civil Rule No. 4968 (W) of 1977. It has also been claimed that since the order as mentioned above was a consent order, so without further or subsequent consent, the same cannot be varied, modified or interfered with by this Court. The proceedings in question has also been claimed to be one of great public importance. Such fact cannot of course be denied or disputed. In fact, Mr. Chowdhury, in his usual fairness could not contend otherwise. The deponent has further stated that the notification u/s 48(1) of the said Act, in terms of the judgment or order in Matter No. 346 of 1973 has been published in the issues of the Calcutta Gazette, dated 30th August, 1977, being No. 11644-IA (II)/2B-7/72. The deponent has further claimed that the width of 4 meter for passage as mentioned in the petition, was very clearly shown on the drawing, on the basis of which the compromise was arrived at. As mentioned above, the necessary plan has been annexed with the opposition under consideration and Mr. Sen, in his argument, also contended that the said plan, which was the basis of the consent order in Civil Rule No. 4968(W) of 1977, was made available or known to the petitioner, before such order was obtained. It has been specifically claimed by the deponent of the affidavit, that since the provision for a 4 meter wide road was a condition of the compromise, so the question of 18 ft. wide passage, as claimed, did not arise at all. The deponent has also stated that everything has been done and shall be done in strict compliance with the order, dated 18th December, 1980, as made by the Court. It has also been claimed that the present proceedings, has been taken to frustrate the public purpose as involved and thus the scheme, which has proceeded long way. The deponent has also contended that since the proceeding was initiated under the said Act, so the Metro Railways (Construction of Works) Act, 1978 (hereinafter referred to as the said 1978 Act), would not be applicable. It has also been stated that since the acquisition in this case was initiated under the said Act, so the same should be concluded under that Act and not under the said 1978 Act. In fact, it has also been claimed that the acquisition proceedings in this case, was initiated under the said Act, long before the said 1978 Act came into existence. The reply to the above affidavit-in-opposition, was dated 9th August, 1980, wherein the material allegations have been denied and the statements in the petition have been reiterated.

10. The other affidavit-in-opposition, which is dated 26th March, 1980, has been filed on behalf of the Land Acquisition Collector, Respondent No. 2 and has been affirmed by Shri Nishi Kanta Das, the Respondent No. 2 himself. The deponent of this affidavit, has disclosed the particular of the publication of the notification u/s 4 of the said Act and has stated that the acquisition in question, was for a bona

fide public purpose, viz. for construction of Mass Rapid Transit System and other connected works, relating to the same, from Dum Dum to Tollygunge. He has further stated that the objection u/s 5A of the said Act, as filed by the petitioner, was duly considered and disposed of, on hearing his learned Advocate and with appropriate opportunities. It has also been stated that on due enquiry, it was found that the requirements of the Requiring Authority, were justified and also bona fide and all steps were taken by the Land Acquisition Collector concerned, after, he himself was satisfied with the bona fide of the purpose. The deponent has also narrated and relied on the orders and proceedings in this Court, as mentioned hereinbefore, and has claimed that all steps in the matters, have been taken in due compliance with the orders as made. It has also been stated by the deponent that the withdrawal notification, in compliance with the order of Court, was also duly published on 16th April, 1979. He has further claimed that the case, in the facts and circumstances as disclosed, would be governed by the said Act and not by the said 1978 Act. The facts of the affidavit as mentioned above, were sought to be denied by the petitioner by his affidavit-in-reply dated 3rd October, 1980. It has been categorically asserted that no reasonable opportunity, at any point of time, was given to the petitioner.

11. After the pleadings as mentioned above, a supplementary affidavit-in-opposition dated 2nd July, 1984, was filed for and on behalf of the Respondent No. 4 as mentioned above, through Shri Govind Narayan Phadke. In this affidavit, which incidentally was filed after petitioner's application for amendment was allowed on 11th March, 1980 the deponent has asserted that section 45 of the said 1978 Act, is not violative of Article 14 of the Constitution of India as claimed by the petitioner. He has also denied the fact that the method of working of Metro Railway has endangered the safety and security of the said premises. The deponent has also denied the allegations of any subsequent deviation. It has also been claimed that in terms of the representation of the petitioner, a joint inspection was held on 4th July, 1979 and the concerned enquiry and hearing was held in the presence of the petitioner and his learned Advocate. It has further been reiterated that the approach road as involved, was allowed, in terms of the order as made in Civil Rule No. 4968(W) of 1977, the particulars whereof have been indicated hereinbefore. It has been stated, while agreeing to the said order dated 18th December, 1980 in Civil Rule No. 4968(W) of 1977, the petitioner was fully aware that the width of the road as provided, would be 4 meter. In fact, it has been contended that in the terms, forming the part of the consent order as above, it was specifically agreed that the width of the passage would be 4 meter and as such the question of giving a passage for 18 ft., did not arise. It was contended that the provision for facilitating access of the petitioner to the said premises, would certainly be made in strict compliance with that orders of this Court. It has further been stated that the 4 meter wide passage, as was agreed to be provided to the petitioner, would be sufficient for ingress and egress of the vehicles. It has been alleged that the pretended difficulties as are sought to be put forward now, are far from being real and have

been put forward with the sole intention and purpose of delaying the proceeding. The answer of the petitioner to the allegations, assertions and statements as mentioned above, have been given by his supplementary affidavit-in-reply dated 3rd October, 1980.

12. It should be noted that upto the stage as mentioned above, the petitioner never raised any objection as to the binding nature and character of the consent order dated 18th December, 1980. In fact, no prayer was made on that behalf, as would appear from the prayers of the petition as amended, the particulars whereof have been quoted hereinbefore. It is only on the last date of hearing on 19th March, 1981, a further supplementary affidavit dated 17th March, 1981, was filed by the petitioner, taking additional grounds on the aspect as mentioned above. It should also be noted that before that, the petitioner also filed another supplementary affidavit dated 18th December, 1980, disclosing certain correspondence, the particulars, of some of that, have been mentioned hereinbefore. In the supplementary affidavit dated 17th March, 1981, as mentioned hereinbefore and which was filed without the leave of the Court, the petitioner has denied the validity of the report dated 3rd February, 1981, which was filed through the said Shri G. N. Phadke. The back ground, for which the said report was obtained, should be stated. During the course of hearing, as it appeared to me that the dispute in the instant case, was only in respect of a small width of the access, I requested on 14th January, 1981, the respondents concerned, to find out and report, if it was possible to allow the petitioner an access road by increasing the width of the agreed passage of 4 metre. The report as mentioned above was filed in Court on or about 11th February, 1981, and the same has been kept in the record. The report has stated that no increase of the width of the passage was necessary or required for meeting the purported grievances of the petitioner and more particularly that his car would not be able to reach the premises through the said 4 meter wide passage. As mentioned above, the validity and bona fide of the said report, has been denied by the last supplementary affidavit. In this last affidavit, the petitioner, for the first time, has taken or raised the plea that he was neither bound by the consent order dated 18th December, 1980, nor the said order was a proper one and binding on the parties, apart from being extraneous as (i) the agreement in question, by introducing a plot of land, (for access road), which never formed the subject-matter of the acquisition proceeding, in which various applications were made from time to time, falls outside the scope of the Civil Rule No. 4968(W) of 1977, (ii) the agreement in question was totally outside the scope of the subject-matter of Civil Rule No. 4968(W) of 1977 and the land for access road as referred to in the agreement being outside the proceeding initiated between the parties, this Court will have no jurisdiction to enforce the same and (iii) the concerned unregistered "agreement", which contained "directions", does not form part of the order itself and in any event, cannot be treated as an enforceable order apart from the same being otherwise void and not binding on the petitioner. It should be indicated that the story, for whatever the same is worth, was evolved and it

was repeated that either the petitioner or his learned Advocate could not realise and understand the equivalent of 4 meter in the measurement of foot and it was believed in good faith that the equivalent are of 4 meter, would be 16 ft. and as such, the petitioner and his learned Advocates had agreed in having the agreed order dated 18th December, 1980. It has further been claimed that in view of the letter dated 7th December, 1974, from the General manager of the said Authority, the petitioner also thought that the area equivalent of 4 meter would be 16 ft. and in fact, it has further been contended that in view of the said letter, a passage of 16 ft. and not 4 meter, should have been allowed by the said Authority. It was also and further contended that the order as made in Civil Rule No. 4968(W) of 1977, was improper and unauthorized, apart from being void and as such, the petitioner was not also bound by the concerned consent order. The petitioner has further taken the plea that the facility for access to his building was always the primary and basic consideration and the same cannot be achieved through the 4 meter access road. The petitioner has, in short, claimed the agreement as recorded on 18th December, 1980, to be unenforceable and the parties in lis should be directed to act in accordance with the undertaking as given in Matter No. 646 of 1973. Since the supplementary affidavit as mentioned above, disclosing new materials and such grounds, were filed very late in the proceedings, so the appearing respondents were asked whether they would like to file any rejoinder and they answered in the negative and wanted to continue with the proceeding, after having it in record that they are not making any admission of the allegations as made or the statements as contained in the same.

13. Mr. Chowdhury, on the analogy of the provisions in Order XXIII, Rule 3, which lays down that where it is provided to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise (in writing and signed by parties), or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith (so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit):

Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.

(Explanation : An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9of 1872), shall not be deemed to be lawful within the meaning of this rule), contended, that since the agreement in question, as filed in Civil Rule No. 4968(W) of 1977, and on the basis whereof the order dated 18th December, 1980, even though by consent, was passed, the same was either void or voidable, as (a) the agreement was not signed by the parties, (b) the

plan as referred to therein was neither annexed nor produced and (c) the same was not registered. In fact, Mr. Chowdhury, at one stage sought to deny even the filing of the concerned agreement, which was the basis of the consent order. Such order on consent and that too on the basis of the agreement was made on 18th December, 1980, in the presence of Sarbashree Bhagabati Prosad Banerjee and Tapan Kumar Pal, two of the learned Advocates for the petitioner in Civil Rule No. 4968(W) of 1977, at that time. Mr. Banerjee, who is known for his fairness, also appeared in this case and was present in Court. He was requested to inform the Court, whether such agreement, which was the basis of consent order, was filed. He in his usual fairness, answered in the affirmative. Thus there is no doubt that the agreement in question, which was directed to form or make a part of the order dated 18th December, 1980, was filed in Court. At this, Mr. Chowdhury contended that even if such agreement was filed, the same was either void or voidable, for the other reasons or admitted absence of them, and as such the order as made, on that basis, was not binding on the petitioner. It is true that the agreement as filed in Court, was neither signed by the parties nor their learned Advocates, or the same has been registered and the plan has not also been annexed. But, since Mr. Sen has stated that the plan was made known to the petitioner and the agreement as mentioned earlier, was admitted to have been filed by the learned Advocates, appearing for the petitioner at the relevant time. I think, in agreement with the submission of Mr. Sen, that such defence as taken now, are after thoughts and this fact would also be established from the fact that either in the main petition, on which the present Rule was issued or at the stage of amendment, such statements have not been made or the necessary plan taken, and only at the last supplementary affidavit dated 17th March, 1981, which as mentioned above, was filed during the course of hearing, such plea as taken. It must also be noted that on being asked, whether the provisions of the Code, would be available, in proceedings under Article 226, Mr. Chowdhury referred to section 141 of the Code of Civil Procedure, which lays down that the procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of Civil Jurisdiction.

(Explanation : In this section, the expression "proceeding" includes proceedings under order IX, but does not include any proceeding under Article 226 of the Constitution) and then to the determinations in the case of (1) Krishnalal Sadhu and Others Vs. State of West Bengal and Others, . In that case, it has been observed that section 141 of the Code of Civil Procedure, is directly attracted to an application under Article 226 of the Constitution and as such, provisions of the Civil Procedure Code, as can be strictly applied to writ proceedings, are applicable to such proceedings. That determination was made on 27th January, 1965 i.e. at a point of time, when the Explanation u/s 141 of the Code, which was inserted or added in 1976, was not there. As such, in agreement with the submission of Mr. Sen, I hold that the determination referred to hereinbefore, would not apply to the facts of this case. In my view, and that the considering the effect of the Explanation to section 141 as incorporated or added in 1976 as

mentioned above, section 141 is not applicable to proceedings under Article 226 of the Constitution of India. I find as above, since the jurisdiction, which High Court exercises under Article 226 of the Constitution of India, is a special and not a limited one, and the same is neither revisional nor appealable, the submission of Mr. Chowdhury on the applications of the CPC and in that view of the matter, the provisions of Order XXIII, Rule 3, fail.

14. The arguments as referred to hereinbefore, not having succeeded, Mr. Chowdhury sought to rely on his second branch of submissions, as mentioned hereinbefore, and contended that as the agreement in question, was beyond the provisions of the Indian Registration, Act 1908 (hereinafter referred to as the said 1908 Act), or the pre-requisites under the same, not having complied with, the Court was not authorized and justified in passing the consent order dated 18th December, 1980, on the basis of the agreement in question. In support of his submissions, reliance was first placed by Mr. Chowdhury, to the following provisions of the said 1908 Act: -

Section 17(1). The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely: -

(a)

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c)

(d)

(e) non-testamentary instruments transferring or assigning any decree order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish whether in present or in future any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:

Provided that the State Government may, by order published in the Official Gazette, exempt from the operation of this sub-section any lease executed in any district or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees, and it was contended that since in view of those provisions, registration of the agreement was required and such registration was not admittedly done, so the order as made, has either been frustrated or has made the same void or voidable. Section 17, admittedly speaks of documents, which are required to be registered compulsorily. Mr. Chowdhury also contended that the effect of such non-

registration, would mean, as in section 23 of the said 1908 Act, that the documents in question, cannot be accepted for registration as it was not presented for that purpose, to the proper officer, within the time as stipulated and as such also, the agreement in question or the order as made on that basis, even though by consent, cannot be given effect to or acted upon. The effect of non-registration of documents, required to be registered, are in section 49 of the said 1908 Act and to the following effects: -

Section 49. Effect of non-registration of documents required to be registered. - No document required by section 17 or by any provision of the Transfer of Property Act, 1882, to be registered, shall,

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as evidence of part performance of a contract for the purpose of section 53A of the Transfer of Property Act, 1882, or as evidence of any collateral transaction not required to be effected by registered instrument, and as such also, and since there was admitted registered instrument, and as such also, and since there was admitted non-registration, Mr. Chowdhury sought to supplement the defence of the petitioner, the particulars whereof have been indicated hereinbefore. Mr. Chowdhury, in fact, contended that for the shortfalls as mentioned above, the whole thing was nullity and consequently, the points, as are sought to be taken or raised now, could be agitated and put forward, even at a late stage or at any stage of this proceedings.

15. In support of his submission as above, and on the question of the said 1908 Act, reliance was placed by Mr. Chowdhury, to the determinations in the case of (2) *Todupunoori Dubbiah Vs. Todupunoori Laxmiah and Others*, , wherein, it has been observed that a compromise comprising properties in suit as well as properties outside the same, requires registration, only to the extent of the property, which is outside the subject-matter of the suit. He next relied on the determinations in the case of (3) *Gokul Chand Vs. Jagdish Chandra and Another*, , where, it has been observed that said sub-clause (vi) of sub-section (2) of section 17 applies to any decree or order of a Court except a decree or order expressed to be made as a compromise and compromising immovable property other than that which is the subject-matter of the suit or proceeding. This means that any decree or order of a Court affecting the rights mentioned in section 17(a), (b) and (c) would not require registration. It will, however, require registration where the decree or order on the basis of compromise affects the immovable property other than that which is the subject-matter of the suit. Mr.

Chowdhury, then relied on the determinations in the case of (4) The Sree Meenakshi Mills, Ltd. Vs. Their Workmen, , in which case, it has been observed that if the document itself creates an interest in immovable property, the fact that it contemplates the execution of another document, will not exempt it from registration u/s 17(2)(v). In view of the above mentioned determinations, Mr. Chowdhury specifically contended that as the plan was not annexed to the agreement, which was the basis of the consent order and when the agreement was not admittedly registered and signed, so, as mentioned above, entire proceedings was frustrated. In support of his submissions, that non-registration in the instant case, had the effect of a nullity, Mr. Chowdhury referred to the determinations in the case of (5) Kiran Singh and Others Vs. Chaman Paswan and Others, , wherein it has been observed that it is a fundamental principle that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties.

16. The contentions of Mr. Chowdhury, were justifiably claimed by Mr. Sen, to be not bona fide and an after-thought. It was also claimed by Mr. Sen that the agreement, which was the basis of the consent order in this case, not having obtained through any threat, misrepresentation, coercion or undue influence and the same having been a voluntary one and on appraisal of all aspects was accepted by the learned Advocates of the petitioner, when filed, the defence as sought to be taken now, must be rejected or should not be entertained at this stage or in this jurisdiction. It was claimed by Mr. Sen, it at all, the petitioner can at best, try to have such agreed order or the agreement, set aside in other forum and in any event, the order as made on consent, cannot be set aside, except on consent. In fact, he stated that the respondents are not consenting to have the order as made, set aside. When such an agreement, as in this case, was filed in the proceedings and that too with due notice to the learned Advocates appearing or with their consent and knowledge and no exception was taken before or at the time of passing a consent order, on that basis, the consenting parties should not, in my view, be allowed to contend otherwise, as that would create embarrassment for all concerned, including the Court, making the order, on the due representation.

17. The acquisition in the instant case, no doubt is one of great public importance and utility and from the conduct of the petitioner in this proceedings, or the earlier concerned one, there is much room for holding that the petitioner, at all material times was and still is interested in delaying or hampering and frustrating the same. I am also of the view and that too, on consideration of the pleadings and the submissions as made in this proceedings that the prayers as made now and more particularly after the initial and amended pleadings, were not only bona fide, but they were after thoughts too. The submissions as made

by Mr. Chowdhury, for rendering the agreement and the concerned consent order, to be void or voidable, also appear to me to be not bona fide, as Matter No. 646 of 1973, was also disposed of practically on the basis of agreement, which was neither signed nor registered but became effective on the basis of exchange of letters and the petitioner, has accepted the same or is now agreeable to accept that, but not the one, which even though not registered or signed, was filed and accepted by his learned Advocates in Civil rule No. 4968 (W) of 1977. When a learned Advocate on power, files or accepts an agreement as filed, his client, in view of the terms of the power as executed, should not be allowed to contend otherwise. As mentioned herein before, the learned Advocate appearing for the petitioner in Civil Rule No. 4968(W) of 1977, agreed that the agreement as it is, was filed in Court and on that basis, the consent order dated 18th December, 1980 was passed. It should be mentioned here that on a reference to the power as filed in Civil Rule No. 4968 (W) of 1977, it would appear that the learned Advocate for the petitioner, amongst others, was also authorized to compromise the case. As such also, I am of the view that the petitioner should not be allowed to contract out of the agreement, which was the basis of the consent order. The stand as taken by the petitioner now, thus appear to me, to be not bona fide and not available. So, the arguments advanced by Mr. Chowdhury on the application of the CPC and the non-compliance with the provisions of the said 1908 Act, should fail. In view of my determinations as mentioned above, I am also of the view, that the case as cited by Mr. Chowdhury, in support of his submissions under the said 1908 Act, should be held and observed to be inapplicable in this case. I further hold that the prayers and the submissions as made by Mr. Chowdhury, on the basis of the subsequent pleadings, would not also be available to the petitioner, in aid of his original prayers in the petition, or the amended petition, the particulars whereof, have been quoted hereinbefore.

18. Mr. Chowdhury, lastly and alternatively claimed that the provisions of the said Act, should not be applied in this case, but compensation should be awarded in terms of the provisions of the said 1978 Act. In fact, this was the original and real prayer of the petitioner. Even though such claim has been denied and disputed by the answering respondents, Mr. Sen, appearing for the General Manager of the said Authority, on instructions stated, that such claim would be considered in appropriate stage and in accordance with law, on representation being duly made. Such stand having been taken, I refrain from deciding the concerned point at this stage and keep the same open for future negotiations and determinations.

Such and above being, the position and since the order as made on consent, has not been consented to be withdrawn or set aside and further-more, when I do not accept the submissions of Mr. Chowdhury, the Rule should be and is discharged as above. There will be no order as to costs.