

**(2010) 02 CAL CK 0003**  
**In the Calcutta High Court**  
**Case No : F.M.A. No. 20 of 1999**

State of West Bengal and Others

APPELLANT

Vs

Micheal Reginald Simon De"souza and Others

RESPONDENT

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**Date of Decision :** 04-02-2010

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, Order 47 Rule 7, 114  
Constitution of India, 1950 — Article 154, 162, 258(1), 258(2), 356  
Government of India Act, 1935 — Section 102, 107  
Land Acquisition Act, 1894 — Section 11, 16, 18, 4, 5(A)  
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 2(e)  
Requisitioned Land (Continuance of Powers) Amendment Act, 1951 — Section 2

**Citation :** 114 CWN 677

**Hon'ble Judges :** Kalyan Jyoti Sengupta, J;Abdul Ghani, J

**Bench :** Division Bench

**Advocate :** Anindya Mitra, Prabir Roy Chowdhury, A.N. Banerjee and Nirmalendu Patra, for the Appellant; P.K. Das, Shakti Nath Mukherjee, Shibaji Sen, Tapas Banerjee, Haris Tandon, Ritabrata K. Mitra, L.K. Gupta and Sunil Ghosh, for the Respondent

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## Judgement

Kalyan Jyoti Sengupta, J.—This appeal was against judgment and order of learned Single Judge dated 11th October 1996 whereby and whereunder the land acquisition proceeding under the Act 1 of 1894 was quashed and also directed de-requisition of the property in question and to hand over possession of the same to the writ petitioner within the stipulated time mentioned therein. However, liberty had been given to the State to initiate fresh acquisition proceeding if necessary in accordance with law after de-requisition and making over possession of the said land. The short fact leading to filing of the writ petition as above and also preferring the appeal is set out hereunder :

On 1st April, 1942 the First Land Acquisition Collector Government of West Bengal passed an order in exercise of the power under Rule 75A of the Defence of India Rules, framed u/s 2(5) of the Defence of India Act 1939 whereby and whereunder the 3rd, 4th and 5th floor of premises no. 10, Madan Street,

Calcutta 700012 (hereinafter referred to as the said premises) was requisitioned. Thereafter, on or about 10th January 1943 1st, 2nd and 4th floor of the said premises was requisitioned and the same was allotted to Air Raid Personnel. Thus on or about 10 January 1943 requisition of the said premises in its entirety was completed. On 6th February 1947, there had been an agreement for rent compensation between the Governor for the province of Bengal and the owner of the premises, for payment and the said rent compensation under the agreement, was to be paid by the Revenue Department of the Provincial Government. The said Requisition of Land (Continuance of Powers) Act under D.I. Act continued till 1947. On 1st April 1951 The Requisitioned Land (Continuance of Powers) Amendment Act, 1951 came into force and the requisition already done under the D.I. Rules was to continue so far as it relates to land requisitioned by and under the authority of the Central Government. On 24th April 1953 the State Government informed the owner in question that the requisition would continue. On or about 14th April 1946 the writ petitioner approached the State Government for release of the said premises. However, on refusal of the State the owner filed writ petition on 19th August 1973 for de-requisition of the same, unsuccessfully. In the writ petition, it was one of the prayers that the requisition be declared null and void. In 1973 an appeal was preferred against the said judgment and order dismissing the writ petition however, the said appeal was withdrawn by the writ petitioners.

2. After the factual development as aforesaid on 19th July 1972 Finance (Taxation Department) had required the Government to acquire the said premises. On 18th January 1974 notice u/s 4 of the Land Acquisition Act 1894 was published in Calcutta Gazette and objection was filed by the owners viz. writ petitioners against the said acquisition on 29th May 1974. After considering objection the declaration u/s 6 of the said Act was published on 10th June 1975 thereby it was declared that the said premises was needed for public purpose. The owner of the property filed claim for compensation before the L.A. Collector on 15th February 1976 and after issuance of notices u/s 9(3) and (4) of the Act 1 of 1894 and after hearing, the award was made on 12 February 1979 assessing compensation of Rs. 11,20,721.00/-. On 26th March 1979 being dissatisfied with the quantum of the award the writ petitioner made reference to the Collector u/s 18 of the said Act for adjudication of the legitimate amount of compensation to the Land Acquisition Judge. The compensation amount of the award of Rs. 11,30,971 was deposited with the Reserve Bank of India on 4th April 1979. On 10th May 1979 notice was issued to take possession of the said premises formally. On 18th May 1979 writ petitioner purported to file written undertaking to give vacant possession of all the four floors of the said premises. On 29th June 1979 in the said writ petition being Civil Rule No. 6976(W) of 1979 on which the impugned judgment and order was also passed, was filed and order of status quo was passed thereon. On 17th September 1979, Learned Trial Judge however vacated status quo order.

3. On appeal being preferred in 1980 an order was passed restoring status quo

as on date of disposal of the appeal and was directed to continue till the disposal of the Rule. On 19th December 1996 a review application was filed against the judgment and order impugned and was dismissed on 11th March 1998. Thereafter on 25th June 1998 present appeal was preferred, with the application for condonation of delay which was allowed on 21st July 1998.

4. On behalf of the respondents a preliminary objection was taken as to maintainability of the appeal in view of dismissal of the review application which operate as bar to further proceedings.

5. Mr. Anindya Kumar Mitra appearing with Mr. L. K. Gupta both Senior Advocates in support of the appeal submits that the appeal is maintainable even after dismissal of the review application. According to them since the review application was dismissed original judgment and order appealed against remains untouched. Therefore, appeal can be maintained in usual course. Moreover, appeal was admitted for hearing there is no point to urge aforesaid objection. The question of merger doctrine in case of dismissal of the review does not and cannot arise. He submits that this legal proposition has been pronounced by recent pronouncement of the Supreme Court reported in *Manohar Nale and Others Vs. Jaipalsing Rajput and Others*, and Full Bench decision of Madhya Pradesh High Court reported in *Smt. Seema Mitra Vs. Smt. Lotika Mitra*,

6. Their contention on merit is that the challenge against the acquisition proceeding is not entertainable after declaration u/s 6 of the Act 1 of 1894 and award having been published u/s 11 and compensation having been received. The property after the aforesaid stage is over under the law stands vested in the State free from encumbrances u/s 16 of 1894 Act.

7. He has drawn our attention on this proposition of law to the judgment of the Supreme Court reported in *Executive Engineer, Jal Nigam Central Stores Division, U.P. Vs. Suresha Nand Juyal alias Musa Ram (Deceased) by LR's and others*, . Even steps have been taken for making a reference u/s 18 of the Act 3 of 1894 claiming higher compensation, thus the writ petitioner accepted legality and validity of the acquisition proceedings and she is debarred from challenging the same. In this situation no challenge can be maintained as it has been ruled in a Division Bench judgment of this Court reported in 1988 (2) CLJ 20.

8. Mr. Mitra on the question of acquisition of requisitioned premises submits that property requisitioned under the Defence of India Rules stood released from requisition on repeal of Defence of India Rules. For continuance of such requisition the State Government passed an Ordinance followed by an Act in 1947. Thereafter the requisition continued under West Bengal Requisitioned Land (Continuance of Powers) Act 1951 ordinance thereafter under Act of 1951 enacted by State legislature therefore provision thereof were applicable to requisition order in question since those orders were passed by the West Bengal Provincial Government under Defence of India Rules as is evident from requisition orders. The Central Act 1952 had no application to these requisitions.

The property was requisitioned by and in possession of, State Government although before acquisition it was never in unauthorised occupation.

9. He further submits when requisition was done by the State and possession was all along with the State, acquisition could lawfully be made by the said 1894 Act. There was no necessity of de-requisitioning before acquisition.

10. His further contention is that there is no antithesis between power of requisition and acquisition and a property under requisition could be acquired even under 1894 Act even though acquisition under 1951 Act was also permissible.

11. In support of this legal submission he had relied on following decisions : AIR 1968 SC 244 2002, (4) SCC 160, AIR 1989 Del 116.

12. Mr. Saktinath Mukherjee, Mr. P. K. Das Senior Advocates while supporting the judgment under appeal made submissions on behalf of the respondents-writ petitioners the substance of which is as follows:

They contend that unsuccessful challenge against the order of requisition earlier does not operate as a bar under the principle of res judicata or otherwise by reason of the fact that proposed acquisition proceedings was made in spite of repeated representations to the authorities for de-requisitioning. According to them acquisition proceeding was not actually or legally challenged. Therefore, question of res judicata does not arise as the concept of acquisition is completely different from that of requisition. Since the requisition was initiated and continued under the D. I. Act, for requirement of Federal or Central Government until the property is de- requisitioned by the Centre, the State Government cannot initiate proceeding under the L.A. Act hence the acquisition proceeding is void ab initio.

13. In support of this legal principle they had relied on following Supreme Court and English decisions:

(1) Devinder Singh and Others Vs. State of Punjab and Others,

(2) AIR 2007 SC 1077

(3) 1961 (3) All ER 1169.

14. Moreover, since the property was under the possession of Government of India its authority to control possession always prevail over that of the State or Provincial Government as there had been Statutory supremacy and now under the Constitutional supremacy and this situation would appear from Sections 102 and 107 of the Government of India Act 1935. In the instant case the action was taken when the Government of India Act 1935 was in operation. Thereafter Indian Constitution came into being and by it the same provision has been adopted. They have placed Articles 73, 154, 162, 258(1) Article 258(2) Article 356 of the Constitution of India. The supremacy of the Central Government over the State Government has also been well explained, and established by legal

proposition stated by the Supreme Court in the case of State of West Bengal Vs. Union of India, . As such the State has no power to acquire the property controlled by the Central Government.

15. In this case, admittedly, the property in question was requisitioned for the need of Defence of India during continuance of Second World War for Air Raid Personnel and this requisition continued under 1952 Act and it is a public premises the definition of "public premises" as given u/s 2(e) of the Public Premises (Eviction of Unauthorized Occupants) Act 1971, which includes premises acquired by requisition therefore, it is a Central Government property and it cannot be acquired by the State. Since the acquisition itself is void ab initio no time frame can be fixed as regard challenge. Accordingly question of delay, laches or estoppel does not apply in this case. The action of the Government is incurably bad and without jurisdiction. In support of this legal proposition they relied on the authorities reported in (1961)3 AER 1169 at page 1172, (1976) Lab.I.C. 1032. When question of lack of jurisdiction of inferior Court or Tribunal is urged the writ will be issued at any time irrespective of question of laches to examine the action. This legal proposition has been settled, according to them, in the decision of this Court reported in New India Industries Ltd. Vs. Union of India, CHITRA CINEMA Vs. Income Tax OFFICER, "A" WARD, VARANASI, AND ANOTHER.,

16. In this case possession is not taken lawfully as the same is with the Central Government therefore, event of vesting cannot take place in this case. As far as factum of filing of undertaking for handing over of vacant possession is concerned the same in the eye of law does not help the case of the appellant as it was done under threat and coercion not out of own volition by the writ petitioners. Any act under threat, coercion in disadvantageous situation, is not legally binding and this proposition is settled in case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, 1.

17. In the instant case the award has not been made in accordance with market price nor the petitioners accepted the same, far less withdrawal of any amount under the award. Therefore, acquisition proceedings can be challenged as there has been no decision to the objection filed u/s 5(A) of Act 1 of 1894. In a number of cases it has been held by the various High Courts that even if the amount of compensation is accepted the acquisition proceeding can be challenged. In support of his submission the following decisions have been relied on by Learned Counsel for the respondents-writ petitioners:

- (i) 67 CWN 647 (A. N. Nath vs. State of West Bengal)
- (ii) Sm. Hemlata Basu Vs. State of West Bengal and Others,
- (iii) Gurdev Singh and Others Vs. The State of Punjab and Others,
- (iv) Shri Sanyojan Co-operative Housing Society Ltd. Vs. Surajben and Others,

18. It is further submitted that in this case instead of the provision of 1952 Act which is a complete code and provides for acquisition of requisitioned premises, provision under Act 1894 has been resorted to. This was not done because on the date of acquisition the property was under lawful requisition. This is not permissible legally as has been held in the case of *Jiwani Devi Paraki Vs. First Land Acquisition Collector, Calcutta and Others*, .

19. Section 6 of 1952 Act obliges the Central Government to release requisitioned property when the original purpose ceases to exist or after the expiry of the period mentioned in Section 6(ia). Unfortunately, in the instant case, the Central Government or its delegate has not so acted infringing the provision of the Act.

20. After hearing the submission of the Learned Counsels and having gone through records before us the point for consideration in this appeal is as to whether learned Trial Judge is justified in quashing acquisition of property done under Act I of 1894 or not.

21. It appears that Learned Trial Judge while quashing the said notification and the acquisition proceedings has strongly viewed that without releasing the property from requisition this property cannot be acquired. The learned Trial Judge was persuaded to conclude the aforesaid proposition by the decision of the Supreme Court reported in case of *The Union of India (UOI) Vs. Ram Kanwar and Others*, and also the decision in case of *Dhone Gopal Mukherjee and Others Vs. The Secretary, Land and Land Revenue Dept., Govt. of West Bengal*,

22. It further appears from the submission of both the sides the following position is admitted.

23. By two notices entire premises No. 10, Madan Street, Calcutta was requisitioned under the provision of Rule 75A of Defence of India Rule framed under the Defence of India Act, 1939. From the records it reveals that thereafter this requisition continued by operation of law viz. under the Requisitioned Land (Continuance of Powers) Ordinance, 1946 followed by Act XVII of 1947 for same purpose. Thereafter by and u/s 2 of the Requisitioned Land (Continuance of Powers) Amendment Act, 1951. It appears from reading of Section 2 that requisitions done by or under the authority of Central Government was allowed to continue leaving other requisitions to expire on 31st March 1951. Therefore, Section 2 as above is set out below :

"Section 2 - For Sub-section (3) of Section 1 of the Requisitioned Land (Continuance of Powers) Act,. 1947, the following sub-section shall be substituted:

(a) as respects the requisitioned lands which, at the commencement of the Requisitioned Land (Continuance of Powers) Amendment Act, 1951, are subject to requisition by or under the authority of the Central Government, on the 1st day of April, 1952..."

24. Thereafter Section 24(2) of Act of 1952 replaced virtually Continuance Act of 1951, so far as requisition done by and under the authority of Central Government. In this situation, aforesaid acquisition under Act 1 of 1894 was initiated. Objection u/s 5A of Act I was filed and u/s 6 of the Act I the property was declared to be public purposes award was published and such award was objected to by filing an application for reference.

25. It is contended that and so also accepted by the Learned Trial Judge that property should have been released from requisition under Act of 1952. To appreciate the scope and purport of this Act relevant provision thereof is required to be stated hereunder.

26. In the preamble of the said Act it is mentioned that the Act is to provide for requisitioning and acquisition of immovable property for the purpose of the Union. The said Act has been enacted primarily for requisitioning and acquisition of the property for the purpose of the Union on or after commencement of this Act, and secondarily the said Act has also continued all requisition and acquisition of all the immovable property either requisitioned or acquired under the Requisition Land (Continuance of powers) Act 1947, and Delhi premises (requisition and eviction) 1947 and in the process Section 6 of the said Act is sought to be relied on.

27. The relevant portion of the same of the said 1952 Act is as follows:

"Section 6 - The Central Government may at any time release from requisition any property requisitioned under this Act and shall as far as possible, restore the property in as good a condition as it was when possession thereof was taken subject only to the changes caused by reasonable wear and tear and irresistible force;

Provided that where the purpose for which any requisitioned property was being used cease to exist, the Central Government shall, unless the property is acquired u/s 7, release that property, as soon as may be, from requisition..."

28. It is clear that the aforesaid provision Section 6 of 1952 Act is applicable for release of the property in case where the property has been requisitioned by the Central Government. The Defence of India Rules enabled both Central Government as well as the Provincial Government to requisition any property.

29. Now it is to be examined in this case which authority had requisitioned the land. It is contended by the writ petitioners-respondents that the Central Government had requisitioned and on the other hand it is contended by the appellant that it was done by the Provincial Government. This rival factual aspect has been stated on oath by both the parties. When there has been inconsistent and contradictory statement on oath by both the parties adversely against each other it is always safe, rather it is only course of action to look into the document which is the clinching factor on the issue. The statement in the affidavit is brought before the court basing record. The Court in a fit case may ignore the

statement in affidavit especially when the same is found to be inconsistent with the document. At page 47 of the Paper book we noticed that by Memorandum dated 1st April 1942 the First Land Acquisition Collector, Calcutta being the official of the Provincial Government requisitioned the 3rd, 4th, 5th floor of the said premises. Thereafter, by similar notice subsequently, under the said Defence of India Rules 75A the First Land Acquisition Collector being the official of the Provincial Government requisitioned the ground, 1st, 2nd floor including open terrace over the portion together with electric, sanitary and water.

30. We have also found in the records that by an agreement entered into by the predecessor-in-interest of the writ petitioner-respondent Rozario De Suza and the Governor for the Province of the West Bengal, rent compensation was fixed. Thus without any doubt it can conclusively be held that the property was requisitioned by the Provincial Government not by the Central Government. In the judgment as well as the argument advanced by the writ petitioners-respondents that as if the property has been requisitioned by the Central Government and it is obliged to release the property u/s 6 of the 1952. Both the findings of the learned Trial Judge and the contention of Mr. Mukherjee and Das in support thereof are completely contrary to the records. According to us it is the Provincial Government who is to release the property.

31. Section 6 of the 1952 Act, we are of the view, is not attracted where requisition has been made by the Provincial Government under the Defence of India Rules at the first instance; thereafter the same continued by and under successive validating and/or continuing enactments. Hence, reliance of the learned Trial Judge on the Supreme Court decision in case of The Union of India (UOI) Vs. Ram Kanwar and Others, is totally inappropriate in this case. Learned Single Judge of this Court while dealing with the case of Dhone Gopal Mukherjee and Others Vs. The Secretary, Land and Land Revenue Dept., Govt. of West Bengal, ) relied on above Supreme Court decision.

32. In Supreme Court decision factually it was found the property was requisitioned under Rule 75A of the Defence of India Rules and subsequently such requisition continued by successive Act of Continuance including 1952 Act. Factually it was held that the property had through out been in requisition of the Central Government which was obliged under law to release the property as there has been no attempt to acquire the property by it. Moreover, the Central Government at one point of time was not disinclined to release the property from requisition.

33. Under the aforesaid factual background Supreme Court held that by virtue of Section 6 of 1952 Act the Central Government was obliged to release the property as the purpose for which the property was requisitioned ceased to exist. The argument advanced by the Learned Attorney General in that case to the effect "the public purpose or the word "public purpose" is variable words and it depends upon the subsequent event and changes which have taken place. It was argued that public purpose does not necessarily mean the same purpose for

which the property was originally requisitioned and it could be different purpose and if such purpose is held to be public purpose by the Central Government the same fulfil the requirement of valid requisition." The said argument was negated by the Justice Subba Rao who had spoken on behalf of the Bench while dismissing the appeal. It was held that in order to continue the valid requisition the purpose must be same as it was at the time of initial requisition and any purpose or object which is different and or at variance with the original one cannot be termed to be a public purpose to perpetuate the requisition.

34. In the case of Dhonegopal Mukherjee learned Single Judge completely relying on the aforesaid proposition has held in that case also in the similar line. We are unable to accept the ratio decided by the Learned Single Judge while applying Act of 1952 as the learned Judge in this case did not consider at all the provision of Section 2 of Amendment Act 1951 whereby requisition by Provincial Government later State Government was not allowed to continue.

35. We are unable to uphold the findings of the learned Trial Judge that during continuance of the requisition acquisition proceeding is impossible. It is a fundamental rule the requisition does not affect the title of the owner whereas acquisition does. The requisition only deprives the owner of use and enjoyment of the property, and in consideration of deprivation rent compensation is allowed, while in latter case even during possession of the third party either under requisition or otherwise acquisition under the Act 1 of 1894 is permissible. In the Act 1 of 1894 we do not find any provision that the acquisition of a property which is under requisition, cannot be resorted to.

36. Mr. Saktinath Mukherjee, Senior Advocate however, tries to persuade us that since the property was under possession of the Central Government it cannot be acquired by the State. We are not impressed with this submission for the simple reason that the property was not requisitioned by the Central Government and it was found to have been done by the Provincial Government. So Provincial Government can take action for acquisition in relation to the property. Therefore, his argument on the question of pre-dominance of the Central Government over the State or Provincial Government either under Government of India Act 1935 or under Constitution has no place here.

37. In the case of First Land Acquisition Collector and Others Vs. Nirodhi Prakash Gangoli and Another, Supreme Court and the Division Bench of Delhi High Court in case of D. Narayan vs. Union of India ( AIR 1989 Del 116) have taken the view arrived at by us.

38. In paragraphs 9 and 10 of the said decision (AIR 1989 Del 116) while considering the case of the Supreme Court decision reported in The Union of India (UOI) Vs. Ram Kanwar and Others, and Dhone Gopal Mukherjee and Others Vs. The Secretary, Land and Land Revenue Dept., Govt. of West Bengal, has held amongst other as follows:

"There is a basic and fundamental distinction recognized by law between

requisition and acquisition. The two concepts, one of requisition and the other of acquisition, are totally distinct and independent. The concept of acquisition has an air of permanence and finality in that there is transference of the title of the original holder to the acquiring authority or the Government. The concept of requisition merely involves taking of domain or control over property without acquiring rights of ownership. From the very nature of things, it is only of a temporary duration....."

39. In the case of *Grahak Sanstha Manch and others Vs. State of Maharashtra*, it has been discussed and relied on by the Hon"ble Judges of the Bench by holding the same proposition of law as it has been held in *Delhi Case (Supra)*. In that case it is held that during continuance of the requisition, acquisition for perennial public purposes is permissible under the law. Similar view was also taken by the Supreme Court in earlier case of *H.D. Vora Vs. State of Maharashtra and Others*, . In the teeth of observation of the Supreme Court observation of the learned Trial Judge that the instant property cannot be acquired under the Land Acquisition Act of 1984 by the State Government until release from the requisition is not legally acceptable. This observation of the learned Trial Judge appears to be founded upon the incorrect reading of scope and purport of Sections 23 and 24 of the Act No. XXX of 1952. Upon careful and accurate perusal of the said two Sections it does not appear that the same prohibits acquisition under any other appropriate Act. It is also factually wrong to conclude that the Central Government is to release the property in this case and derequisition was to be done by the Central Government under Central Act No. XXX of 1952. We have already discussed and noted the requisition was done by the State Government (their provincial Government) not the Central Government. The effect of Section 24 (not Section 23 as wrongly noted by the learned Trial Judge) of Act of 1952 is continuance of the requisition made earlier under Rule 75(A) of Defence of India "Rules. The Supreme Court has explained that purpose cannot be different from that of originally done. In case of *The Union of India (UOI) Vs. Ram Kanwar and Others*, ) the ratio which is relevant for this purpose is that requisition may continue for a long time but the purpose must be same and identical and not for different purpose. Thus we think that there is not legal infirmity or bar in taking step for acquisition for public purposes in respect of a property which is under requisition. It is necessary the purpose of acquisition must be for public although the purpose of requisition might have come to an end by passage of time and for which the property might be required to be derequisitioned under the law but this situation does not prevent the State from acquiring the property for public purpose different from what was for requisition.

40. We are of opinion in this case whether the continuance of the requisition was lawful or not or for that matter the property ought to have been derequisitioned and released, cannot be agitated in this writ proceeding and the learned Trial Judge was not within his competence to decide the issue once again after dismissal of the writ petition filed by the original writ petitioner earlier and

further appeal being withdrawn. Admittedly in the earlier writ petition the issue related to continuance of requisition and for derequisition and release of the property. In view of the dismissal of the same we think that all these points with regard to legality and validity of the requisition as observed by the learned Trial Judge is hit by the principle of issue estoppel if not res judicata.

41. Now next question is to be considered is whether the acquisition proceedings is amenable to challenge after having filed objection to the notice u/s 4 and after issuance of notice u/s 6 followed by the award having been passed. Under Act 1 of 1894 after notice is issued u/s 4 if objection is taken hearing is to be given. In Section 6 of Act I of 1894 it is specifically mentioned that after considering the report prepared taking into objection u/s 5A of the said Act that particular land is needed for public purposes by reason of the fact that on receipt of objection u/s 5(A) the Collector under Sub-section 2 of this Section made enquiry and then report is submitted to the Government.

42. Sub section 3 of Section 6 of 1894 Act provides conclusiveness of the evidence of public purpose. We, therefore, appropriately reproduce Sub-section 3 of Section 6.

"The said declaration shall be a conclusive evidence that the land is needed for public purpose and/or for a company as the case may be; and, making such declaration, the appropriate Government may acquire the land in the manner hereinafter appearing".

43. We are of the view it is too late to complain regarding the hearing as this could have been done either before or immediately after publication of notice u/s 6 of the said Act. It appears from the records indisputably that the acquisition proceedings were completed and it culminates in passing an award by the Collector. Even award is also challenged by making an application for reference u/s 18 of the 1894 Act and such proceeding is still pending. We are of the view that the original writ petitioners or for that matter present respondents are estopped from questioning the public purpose or the acquisition proceedings itself although in certain cases principle of estoppel as against provision is not bar against challenge. But this legal benefit is available in the case where element of public interest is involved not in case of a private interest. This view is supported by a decision of Supreme Court and also a Division Bench judgment of this Court in case of *Julian Day School vs. State of West Bengal* (A.P.O. No. 90 of 2009). On the almost identical and similar factual back drop in the case of *Executive Engineer, Jal Nigam Central Stores Division, U.P. Vs. Suresha Nand Juyal alias Musa Ram (Deceased) by LR's and others*, The Supreme Court held, exactly what we have observed, in paragraph 5 as follows:

"Obviously, after consideration of all the objections, and rejection thereof, declaration u/s 6 was published. As stated earlier, the award was made and symbolic possession was taken on December 17, 1988. Under the circumstances, the land stood vested in the State free from all encumbrances. After the

proceedings had become final, the writ petition came to be filed on May 19, 1989. The mere fact that due to lapse of time no action was taken after the filing of the writ petition, does not give ground for interference..."

44. According to us once the award is made title to the property passes on to the State, and the vesting in the State in all respects is complete the moment possession u/s 16 is taken.

45. The Division Bench of this Court in case of Smt. Molina Ghosh vs. State of West Bengal & Ors. [ 1988 (2) CLJ 20] after considering a large number of decisions including said Dhone Gopal Mukherjee's case (supra) held that after making reference u/s 18 on the question of quantum of compensation the objector is deemed to have accepted the validity of the acquisition proceeding. It has been held that the proceedings is barred by the principle of acquiescence even res judicata.

46. The next point urged that the appeal is not maintainable in view of the review application having been dismissed, this point should have been dealt with and discussed by us at the first instance but we feel that this point was so insignificant that it does not require first hand consideration and adjudication. The point has been taken seemingly on the principle of merger. It appeared that the application of review was made on limited ground namely on the ground of error apparent on the face of the record. We think it fit to mention there is basic distinction between the right of review and right of appeal, in case of former one it cannot be said to be continuance of the said proceedings rather independent one, while later is preferred covering both fact and law and as such it is continuance of the same proceedings. But it is trite that in the event review application is allowed then obviously the original judgment and order does not subsist and it gets merged with the judgment passed on review. In case of dismissal of the review the judgment and order passed at the first instance remains intact and all rights and obligations are kept preserved and both the parties are free to take action in accordance with law. This position of law has been succinctly discussed in a judgment of the Apex Court in the case of Manohar Nale and Others Vs. Jaipalsing Rajput and Others, Justice SB Sinha (as His Lordship then was) speaking for the Bench observed as follows :

"It is also incorrect to contend that in a case of this nature, namely where a review petition was dismissed, the doctrine of merger will have any application whatsoever.

It is one thing to say that the respondent was entitled to file an application for review in terms of Section 114 read with Order 47 Rule 1 of the Code of Civil Procedure, but it is another thing to say that the decree passed in favour of the respondent merged with the order dismissing the review application. Matter might have been different, if the review application had been allowed either wholly or in part in terms thereof an application for execution of the decree could have been filed only in terms of the modified decree."

47. Yet in another case ( Smt. Seema Mitra Vs. Smt. Lotika Mitra, ) the Full Bench of the Madhya Pradesh High Court in paragraph 13 discussed the proposition of law as follows:

"From the examination of the above provisions, it is sufficient to show that where a review application is allowed, an appeal lies but where it is dismissed, an appeal does not lie. Rejection of the review application on merit and rejection for default are treated differently under Rule 7 of Order 47. There cannot be an appeal against rejection of review application on merits or on default, but in the latter case the party has a remedy by filing an application for restoration of the review application. Otherwise, the remedy would be only to challenge the judgment or order originally passed. In the present case, the remedy would be to challenge the judgment, dismissing the second appeal in the manner provided by law."

48. The decisions cited by Mr. Mukherjee and Mr. Das on the question of void, without jurisdiction are of no relevance in this case as such we feel the same do not require any discussion. Under the circumstances as above we allow the appeal and set aside the judgment and order of the learned Trial Judge. However, we direct the Land Acquisition Judge to proceed expeditiously, if not completed only, within four months date of communication of this order.

49. Interim order passed on this appeal is discharged and it would be open for the parties to take steps in accordance with law as may be advised.

I agree.

Md. Abdul Ghani, J.

Later:

50. Mr. Bandyapadhyay, Learned Counsel appearing for the respondent submits, upon instruction, the operation of the judgment may be stayed for some time.

51. Having regard to the facts and circumstances of this case, we direct operation of this judgment shall be stayed for a period of eight weeks from date. Urgent xerox certified copy of this order shall be supplied to the applicants, if applied for.