

(2003) 04 CAL CK 0041

In the Calcutta High Court

Case No : F.M.A.T. No. 3031 of 1986, A.P.O. No. 253 of 1988 and A.P.O. No. 375 of 1996

Sundar Gupta and Others

APPELLANT

Vs

State of W.B. and Others

RESPONDENT

Date of Decision : 04-04-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1, 141
Constitution of India, 1950 — Article 14, 19, 21
Land Acquisition Act, 1894 — Section 11, 4, 5A(2), 6

Citation : (2006) 3 CHN 384

Hon'ble Judges : Altamas Kabir, J;Alok Kumar Basu, J

Bench : Division Bench

Advocate : Saktinath Mukherjee, Pradip Ghosh, Y.J. Dastoor, S. Samanta, S. Munshi, Kabita Mukherjee and N.S. Alam, for the Appellant;R.N. Bajoria, Soumitra Pal, J.P. Khaitan, Anil Gupta and Sanjay Basu, for the Respondent No. 9, Pulak Ranjan Mondal, Bandana Das, for the State, M.B. Sarkar and S.K. Goral for the Union of India, for the Respondent

Final Decision : Dismissed

Judgement

1. Prem Chand Gupta, since deceased, his son Sundar Gupta and Ors. preferred F.M.A.T. No. 3031 of 1986 challenging judgment and order dated 11th July, 1986 passed in connection with C.R. No. 10869(W)of 1981. Sri Arvind Gupta, one of the sons of deceased Prem Chand Gupta filed A.P.O. No. 253 of 1988 and also A.P.O. No. 375 of 1996 challenging orders arising out of Matter No. 2375 of 1986 and Matter No. 4251 of 1988 respectively.

2. All the three abovementioned appeals have been taken up together for disposal by a common judgement since the points of fact and law involved in all the three appeals appear to be almost identical as evident from the facts of the case disclosed by different affidavits filed by the appellants time to time in connection with those appeals.

Relevant facts of the case:

3. Prem Chand Gupta since deceased was owner of premises No. 1/1, Sterndale Road (presently known as National Library Avenue), Calcutta, measuring more than five bighas and that property was subsequently put in the common stock of Hindu undivided family in 1977 of which Prem Chand Gupta was the karta.

4. Sometime in the month of February, 1965 the Calcutta Medical and Relief Society approached the State Government for acquisition of the land of Prem Chand Gupta as the said land would be required for Calcutta Hospital and Medical Research Institute which was being newly constructed at 7/2, Diamond Harbour Road, Calcutta to avoid traffic dislocation and accidents. The State Government by a letter dated 6th September, 1965 intimated the Society that the proposed acquisition may be made and to avoid legal complication, the Government may even consider a token grant provided the society was agreeable to the proposal of executing a Deed of Licence in favour of the Society and the land would vest in the State after such acquisition. The Society subsequently by a letter dated 7th September, 1965 accepted the proposal of the State Government.

5. The State Government on 29th April, 1966 issued a notification u/s 4 of the Land Acquisition Act to acquire the entire property of Prem Chand Gupta for alleged public purpose namely, for expansion of Calcutta Hospital and Medical Research Institute partly at the public expense and partly at the expense of the Institute and a copy of the notification was duly served upon Prem Chand Gupta inviting objection.

6. Prem Chand Gupta strongly opposed the said acquisition notice contending, inter alia, that there was no need for such acquisition when the Institute itself had sufficient vacant land at its disposal. The competent authority on hearing the objection of Prem Chand Gupta and the reply given thereto by the Institute ultimately recommended in its report submitted u/s 5A(2) of the Act for acquisition of four bighas of land leaving aside one bigha for the personal use of Prem Chand Gupta.

7. It is the case of the appellants that the competent authority, namely, the Collector instead of forwarding his report to the Government sent the said report to the Presidency Commissioner who by his Memo dated 10th April, 1967 recommended to the appropriate department of the Government of West Bengal that the entire land of Prem Chand Gupta may be acquired as Prem Chand Gupta did not require any land for constructing a residential house as apparently he is not a resident of Bengal.

8. The State Government finally accepted the recommendation of the Presidency Commissioner and accordingly on 30th July, 1966, a declaration u/s 6 of the Land Acquisition Act was issued regarding the land in question to complete the legal formalities in the matter of acquisition of the said land.

9. Prem Chand Gupta on 28th March, 1969 filed a writ petition, being Matter No.

202 of 1969, before this High Court challenging the notification u/s 4 and also the declaration u/s 6 of the Land Acquisition Act on several grounds seeking a relief that the entire acquisition proceeding be declared null and void and the entire land in question may be returned to the owner forthwith. Although a rule was issued in connection with the said petition filed by Prem Chand Gupta ultimately the petition was not pursued on the ground of talks of amicable settlement and hence, the petition was not pressed and the rule was discharged.

10. Prem Chand Gupta and his sons were compelled to file a second writ petition being C.R. No. 10869 (W) of 1981 when the talks of amicable settlement did not yield any fruitful result. It is alleged by the appellants that during the pendency of the writ petition a Deed of Licence was executed between the State Government and the Calcutta Medical Research Institute in respect of the entire land of Prem Chand Gupta on 27th June, 1983 and it is pertinent to mention that Prem Chand Gupta died intestate on 31st May, 1982.

11. The present appellants as petitioners sought for amendment in respect of their original writ petition to incorporate certain subsequent events and although such amendment was allowed by the learned Single Judge, the Appellate Court at the instance of the respondent No. 9 rejected the prayer of amendment. The present appellants thereafter filed a SLP before the Hon"ble Supreme Court and the Hon"ble Supreme Court directed for disposal of the writ petition on merit and the SLP was disposed of being withdrawn.

12. The writ petition was finally dismissed on 11th July, 1986 by the learned Single Judge holding, inter alia, that the writ petition which was filed on almost identical grounds taken in the first writ petition filed in 1969 was not maintainable as" the first petition was dismissed for non-prosecution without any liberty to file a fresh petition. The learned Judge was also of the view that there was inordinate delay in filing the writ petition and also there was question of litigated title regarding the land in dispute and hence, on purely question of maintainability no relief was granted by the learned Single Judge.

13. Sri Arvind Gupta, one of the sons of deceased Prem Chand Gupta, thereafter filed a petition, being Matter No. 2375 of 1986, on 5th December, 1986, whereby he sought to challenge the recommendation of the Presidency Commissioner which was finally accepted by the Government and which was the basis of the declaration made u/s 6 of the Land Acquisition Act in respect of the land in dispute. Arvind Gupta also filed another petition, being Matter No. 4251 of 1988, on the 3rd August, 1988, challenging the vires of Section 4 and Section 6 of the Land Acquisition Act, 1894 and also for a consequential relief that the entire acquisition made in respect of the disputed land be declared bad, illegal, inoperative and violative of Articles 14, 19 and 21 of the Constitution. It is relevant to mention in this context that Matter No. 2375 of 1986 was subsequently disposed of by the order dated 1" February, 1988 with the following observation:

This application is disposed of accordingly . The respondent will not take steps or decision solely on the ground that the objector is not a resident of Bengal. This order will not affect the proceedings already taken.

14. Matter No. 4251 of 1988 was dismissed by an order dated 14th March, 1990 holding, inter alia, that there was no merit in the submission of the petitioner challenging the legality and validity of Section 4 and Section 6 of the Land Acquisition Act, 1894. Arvind Gupta, thereafter, preferred A. P. O. T. No. 253 of 1988 and A. P. O. T. No. 375 of 1996, respectively, being aggrieved by, and dissatisfied with, the order of the learned Single Judge passed in connection with abovementioned writ petition filed by him.

15. It would be most relevant to mention that appellant Arvind Gupta ultimately did not press A.P.O.T. No. 375 of 1996 wherein he sought to challenge the judgement and order of the learned Single Judge dismissing his application being Matter No. 4251 of 1988 challenging the vires of Section 4 and Section 6 of the Land Acquisition Act, 1894 and hence, we need not discuss anything further about this appeal and the same may be treated as dismissed being not pressed.

16. From the facts of the case as indicated above, it is very much clear that both in C.R. No. 10869(W) of 1981 and Matter No. 2375 of 1986, the petitioners vehemently challenged the acquisition proceeding started in respect of the land situated at 1/1, Sterndale Road measuring about more than five bighas and the sum and substance of the challenge has been that there was no justifiable need for the acquisition of the land, there was no apparent public purpose behind such acquisition, the acquisition became void in view of the fact that there was diversification by the requiring authority and hence, there was no existence of public purpose, the Government was guided by extraneous consideration before issue of the declaration u/s 6 of the Land Acquisition Act. There was no tangible evidence regarding payment of token amount towards compensation money by the State Government to justify acquisition for public purpose and finally, the report of the Collector was set aside upon considering report of a person who had no locus standi within the four-corner of the Land Acquisition Act.

Submissions made on behalf of the appellants:

17. The submissions made on behalf of the appellants in support of the appeals may be divided broadly under two heads, first challenging the judgement and order of the learned Single Judge dismissing the writ petition being C.R. No. 10869(W) of 1981 and finally pointing out the different deficiencies in the acquisition proceeding which should result in setting aside the acquisition proceeding as a whole.

18. The learned senior Advocate appearing for the appellants submits that the learned Single Judge without discussing merits of the case of the petitioners was pleased to dismiss the writ petition mainly on the ground of maintainability of the same and on going through the impugned judgement, it appears that the learned Judge was of the view that the writ petition was hit under the provisions of res

judicata or at least on the ground of public policy since the earlier writ petition on self-same ground was not pursued by the petitioners and at the same time the petitioners did not obtain any leave from the Court to file a fresh writ petition with the same cause of action. The learned Judge also discarded the writ petition on the ground of inordinate delay and the learned Judge expressed his view that when the challenge against the acquisition proceeding was made almost after a decade without any explanation, the question of merit need not be entered into. The learned Judge was also of the view that there was a question of litigated title as regards the land in dispute and that apart construction being made on the acquired land, it would not be proper to entertain the grounds taken by the petitioners challenging the acquisition proceeding more so when the petitioners did not succeed to obtain leave of the Court for amendment of the original writ petition in order to incorporate certain subsequent events.

19. The learned senior Advocate for the appellants submits that none of the grounds taken by the learned Single Judge in dismissing the writ petition on the ground of maintainability can be accepted in view of the established legal position and also on the basis of observation made by the Apex Court in connection with the special leave petitions filed by the present appellants when the Division Bench of this High Court rejected the prayer of amendment of the original writ petition.

20. The learned Advocate "contends that the Apex Court while disposing of the SLP was pleased to observe that the writ petition must be disposed of on merit and it is the established legal position that when a decision is taken to dispose of a pending litigation on merits, the road block of maintainability of the writ petition will have to be cleared and in this context reliance has been placed on the decision on reported in A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., Delhi Cloth and General Mills Co. Ltd. and Others Vs. Union of India (UOI) and Others, and also The Bengal Immunity Company Limited Vs. The State of Bihar and Others,

21. The learned Advocate contends that the provisions of CPC are not applicable to the writ proceedings by virtue of Section 141 of the CPC and on clear examination of the earlier writ petition with that of the present one it would be clear that the cause of action and the reliefs are not the same and hence, the findings of the learned Single Judge cannot be supported in law.

22. On the question of litigated title regarding the land in dispute, it has been submitted on behalf of the appellant that the notice u/s 4 of the Land Acquisition Act was admittedly served on Prem Chand Gupta who claimed himself to be the owner of the land and it is the case of Prem Chand Gupta that subsequently the land was put in the common stock of the Hindu undivided family of which Prem Chand Gupta was the karta and on the death of Prem Chand Gupta the other petitioners became the legal heirs of the property in dispute. It has been submitted that the award was passed jointly in favour of Prem Chand Gupta and nowhere at any stage of hearing of the writ petition it was submitted by the

respondents that Prem Chand Gupta and on his absence his sons and daughters had no title in the land in dispute.

23. On the question of inordinate delay, it has been contended on behalf of the appellants that during the pendency of the first writ petition there was talk of amicable settlement between the Institute and Prem Chand Gupta and to avoid unnecessary litigation and to get the matter amicably settled, Prem Chand Gupta did not press the first writ petition. It is submitted by the appellant that since the talk of amicable settlement did not yield any result and when it was clear to Prem Chand Gupta that ignoring all established norms and principle the Institute in connivance with the State Government is trying to grab the personal property of Prem Chand Gupta and when on discovery of new facts it was clear to Prem Chand Gupta that the State Government in violation of all legal principle completed the acquisition proceeding being guided by extraneous consideration, there was no option left to Prem Chand Gupta and his legal heirs but to file the 2nd writ petition in 1981 and in the background of these factors the learned Single Judge ought not to have dismissed the writ petition on the ground of inordinate delay. The learned senior Advocate reiterated that the observation of the Apex Court to dispose of the writ petition on merit surely made it obligatory for the learned Single Judge to dispose of the matter on merit and not to discard the writ petition on the technical ground alone. 0

24. The learned senior Advocate contends that it is available from the materials placed before this Court that although initial approach was made for acquisition of the land for the alleged expansion of Calcutta Medical Research Institute, subsequently a completely new organisation namely, Birla Heart Research Centre came up on the disputed land and this very fact has been totally ignored by the learned Single Judge while dismissing the writ petition on the ground that situation has changed to a great extent since the acquisition of the land and sufficient amount of money has been spent for the construction made on the disputed land. Thus, the learned senior Advocate submits that both on the question of fact and law the learned Single Judge was not justified in dismissing the writ petition on the question of maintainability without entering into merits of the case of the petitioners, more so, when the Apex Court made the observation to dispose of the writ petition on merit.

25. On the question of merit of both the writ petitions, being C.R. No. 10869(W) of 1981 and Matter No. 2375 of 1986, the learned senior Advocate contends first of all that the acquisition proceeding has been a mala fide one since its inception as it will appear from the fact not disputed by the respondents that although initial approach for such acquisition was made for connecting road subsequently such requirement shifted to need for quarters for the staff, doctors and nurses and in fact the land in dispute was never required by the Calcutta Medical Research Institute which was the requiring authority but a completely separate organisation took possession of the acquired land. The learned Advocate contends that according to the terms and conditions a deed of licence was

executed between the State Government and the Medical Research Institute but in breach of the deed of licence the land was ultimately transferred to B. M Birla Heart Research Centre and this is clear diversion which is not an expansion and hence, it will not come within the meaning of public purpose u/s 4 of the Land Acquisition Act and in support of this contention reference has been made to the decision reported in *Jaswant Singh Mathurasingh and another Vs. Ahmedabad Municipal Corporation and others*, and 1996(1) CLJ 91 (Himangsu Kr. Sett and Ors. v. Spl. Land Acquisition Officer and Ors.).

26. The learned Advocate contends that there is no scope of dispute regarding the legal proposition that for acquisition of any land for public purpose, there must be at least a token contribution towards the payment of compensation money by the State either partly or fully out of public revenues and this position has been clearly expressed in the decision reported in *Shyam Behari and Others Vs. State of Madhya Pradesh and Others*, The learned Advocate contends that from the affidavits filed by the respondents No. 9 and also by the State respondent it is never established that the State Government in fact paid Re. 1/- in accordance with legal formalities towards payment of the compensation money and it is significant to mention that before the learned Single Judge no convincing document was ever produced by the State Government on the plea that such document was not traceable due to lapse of time. The learned senior Counsel concludes that from the materials placed before the Court in connection with the appeal hearing it has been amply demonstrated by the appellants that there has been no payment by the State Government to the proper authority towards token compensation money from the public revenue and hence the very foundation of the acquisition proceeding was tainted and the same was illegal and inoperative ab initio.

27. The learned senior Advocate for the appellants submits that the declaration issued u/s 6 of the Land Acquisition Act is void, illegal and in violation of the fundamental rights of the petitioners because such declaration was made without caring for the basic requirement of "audi alterem partem". The learned Advocate submits that it has been clearly indicated as the primary requirement of a clean and unbiased governance that a judicial or quasi-judicial authority must act on the evidence properly brought before him in the presence of both parties and not on any information which he may receive otherwise. The learned Advocate contends that the Collector who is the appropriate authority under the provisions of the Land Acquisition Act made a report after conducting the required enquiry and on hearing Prem Chand Gupta but strangely enough such report was monitored by the Presidency Commissioner who has no role to play in the scheme of the act and the Government without any justification and without any legal sanction took into consideration the said report of the Presidency Commissioner and on the basis of that report the declaration u/s 6 of the Act was issued.

28. The learned Advocate submits that the declaration u/s 6 of the Act is illegal

and inoperative, first on the ground that Presidency Commissioner has no role to play in the scheme of the act as reported in *Bijoy Kumar Santhalia Vs. State of Bihar and Others*, Secondly the Government had no jurisdiction to look into the extraneous report of the Presidency Commissioner and it is well-settled that taking into account extraneous consideration would vitiate the decision as reported in *State of Punjab and Another Vs. Gurdial Singh and Others*, . and , *Indian Express Newspaper Put. Ltd. v. Union of India*, and finally before taking a decision on the reports of the Presidency Commissioner and before issue of the declaration u/s 6 of the Land Acquisition Act no opportunity was given to Prem Chand Gupta to offer his comment and objection and hence, the said declaration was a nullity and non est in law vitiating the acquisition proceeding as reported in *Shri Farid Ahmed Abdul Samad and Another Vs. The Municipal Corporation of the City of Ahmedabad and Another*, , *Bai Malimabu and Others Vs. State of Gujarat and Others*,

29. The learned Advocate contends that the Presidency Commissioner in his report recommended for acquisition of the entire land of Prem Chand Gupta upon a consideration that said Prem Chand Gupta is not a resident of Bengal and hence, he could not have any requirement of land for construction of his residential house and this observation of the Presidency Commissioner is unjust, illegal and a flagrant violation of the fundamental right of Prem Chand Gupta.

30. The learned Advocate contends that apart from the objections mentioned above challenging the acquisition proceeding it may be also stated that the said acquisition proceeding is an abuse of the process of law and is a nullity on the ground that joint award was passed by the appropriate authority in respect of the land in question. The learned Advocate submits that a joint award is ex facie, invalid and non est in law and in this connection reliance has been placed on an unreported judgement rendered in *Satyayug Employees Co-operative Industrial Society Ltd. v. State of West Bengal and Ors.*

31. The learned Advocate for the appellants, therefore, submits that the findings of the learned Single Judge in dismissing the writ petition, being C.R. No. 10869(W) 1981, and also Matter No. 2375 of 1986, cannot be supported either in law or fact and regarding merits of both the case it has been amply proved by the appellants that the entire acquisition proceeding is vitiated by fraud and illegality and the said proceeding was never meant for alleged public purpose and even the joint award passed in connection with the acquisition proceeding is bad in law and hence, considering all these aspects together, the order of the learned Single Judge passed in writ petition being C. R. No. 10869(W) of 1981 and Matter No. 2375 of 1986 must be set aside and both the F. M. A. T. No. 3031 of 1986 and Appeal No. 253 of 1988 should be allowed with exemplary cost against the respondents particularly against respondent No. 9.

Submissions made on behalf of respondent No. 9 :

32. Respondent No. 9 has hotly contested all the three appeals pending before us

for disposal and it is pertinent to mention that other respondents namely, State of West Bengal and Union of India have adopted the submissions made on behalf of respondent No. 9.

33. The learned senior Advocate appearing for respondent No. 9, the Administrator, the Calcutta Hospital and Medical Research Institute submits that on careful consideration of both the first writ petition filed by Prem Chand Gupta in the year 1969 and also the 2nd writ petition being C.R. No.10689(W) of 1981 filed by Prem Chand Gupta and his three sons challenging the acquisition proceeding along with all affidavits filed by the contesting parties, it will appear that there is nothing wrong in the judgement of the learned Single Judge dismissing the 2nd writ petition on 11th July, 1986. The learned Advocate contends that there was overwhelming material born out of the Court's record as well as the documents filed by the rival parties that the 2nd writ petition was not maintainable on the grounds discussed by the learned Single Judge in his order dated 11th July, 1986.

34. The learned senior Advocate contends that there is no denying of the fact by the appellants that the first writ petition was not pressed for the reasons best known to the appellants and no leave was sought for at the time of withdrawal of the first petition to file a fresh application and hence, when on making a comparative study of both the first and second writ petitions it is evident that almost all the grounds taken in the first writ petition are common in the second writ petition, the learned Single Judge rightly observed that following the principle of res judicata/public policy, the second writ petition is not maintainable.

35. It is submitted that the provisions of the CPC have been made applicable to writ matters by the rules framed by this High Court. Further, even if Order 23 Rule 1 of the CPC is not per se applicable, the principle relating thereto would apply. The learned Advocate has placed reliance on the following decisions of the Hon^{ble} Supreme Court in support of his contention reported in Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others, , Sarguja Transport Services v. State Transport Appellate Tribunal, Gwalior and Ors.; 1997(2) SCC page 543, M/s. Upadhyay and Co. Vs. State of U.P. and Others, , Upadhyay and Co. v. State of Uttar Pradesh and Ors. The learned Advocate contends that there is no merit behind the submission of the appellants that as the Apex Court directed for disposal of the second writ petition on merit, therefore, it was not open for the learned Single Judge to dismiss the said writ petition on the ground of maintainability. The learned Advocate submits that when on the face of record it was clear to the learned Single Judge that the writ petition is not maintainable being bit on the ground of public policy/the principles of res judicata, there was no need for entering into the merits of the case.

36. It has been submitted on behalf of respondent No. 9 that the second writ petition was filed in the year 1981 challenging the acquisition proceeding which took place in April, 1969 after issue of declaration u/s 6 of the Land Acquisition

Act and also the award published thereafter. Thus there is a delay of more than 12 years in filing the present writ petition to challenge the acquisition proceeding and save and except the alleged talk of amicable settlement, no explanation at all was forwarded by the appellants to condone the delay. The learned Advocate submits that there is not a scrap of paper produced before the Court to prove the talk of amicable settlement and when such talk of settlement was strongly denied by respondent No. 9, it was the duty of the appellants to come forward with some convincing document to prove otherwise.

37. The learned Advocate submits that it has been held by the Apex Court in several of its decisions in connection with land acquisition proceeding that any challenge to a notification u/s 4 and a declaration u/s 6 of the Land Acquisition Act should be made within a reasonable time and the length of the delay is an important circumstance because of the nature of the acts done during the interval on the basis of the notification and the declaration. The learned Advocate has referred to the decision reported in Indrapuri Griha Nirman Sahakari Samiti Ltd. Vs. The State of Rajasthan and Others, , Babu Singh and Others Vs. Union of India (UOI) and Others, , Northern Indian Glass Industries Vs. Jaswant Singh and Others, , Urban Improvement Trust, Udaipur Vs. Bheru Lal and Others, Urban Improvement Trust, Udaipur v. Bherulal and Ors..

38. On the question of litigated title of the land in dispute, which was one of the grounds for dismissing the second writ petition, the learned Advocate contends that it would be evident from the letter dated 5th May, 1965 addressed to the Deputy Secretary, Government of West Bengal and annexed to the first writ petition that the Society could not purchase the disputed land directly from the alleged owners since the property was litigated. It is significant to mention in this context that in spite of several demands by the land acquisition authorities, Prem Chand Gupta could never produce the original title deed of the land in question. It is also available from the affidavit-in-reply of Sundar Gupta, page 93 of paper book No. 1 that the property was attached by the Income Tax Department and it is also available from document that adoptive father of Prem Chand Gupta filed a suit being No. 1451 of 1957 regarding the land in dispute against Prem Chand Gupta. It is submitted by the respondent No. 9 that after coming into force of the Urban Land Ceiling Act in February, 1976, no transfer of land could have been made and hence, the contention of the appellants that Prem Chand Gupta transferred the disputed land in the joint family common stock is totally baseless and without any foundation. Thus, the learned Advocate contends that from several documents produced by the respondent No. 9 and also by the appellants themselves it was clear that there was no clear title in favour of the appellants over the land in dispute and hence, the learned Single Judge rightly observed that the question of litigated title cannot be entered into in course of hearing of a writ petition and on that ground alone the writ petition was liable to be dismissed. The learned Advocate in this context has referred to the decision of the Apex Court in the case of Bokaro and Ramgur Ltd. Vs. The State of Bihar and Another,

39. The learned Advocate for the respondent No. 9, therefore, submits that considering the documents placed before the learned Single Judge it is crystal clear that the second writ petition giving birth to F. M. A. T. No. 3031 of 1986 was clearly hit on the ground of public policy/the principles of res judicata, there was inordinate delay in challenging the acquisition proceeding, the title of the land was completely litigated and hence, on all these grounds the writ petition has been rightly dismissed. The learned Advocate further submits that the plea of the appellants that the question of delay did not arise as amendment was sought for by the appellants regarding the second writ petition has no substance at all when up to the Apex Court, the appellants could not secure a favourable order for such amendment and hence, the learned Single Judge rightly observed that the question of amendment cannot be looked into in deciding the fate of the writ petition.

40. The learned Advocate for the respondents submits that in addition to what has been stated above supporting the judgement passed by the learned Single Judge impugned in the F.M.A.T. even on the question of merit the appellants have no ground to succeed in any of the three appeals preferred by them in connection with the acquisition proceeding.

41. The learned Advocate submits that one of the points taken by the appellants has been that there was no public purpose behind the acquisition of the land in question because originally the purpose was for approach road then it was changed to construction of nurse quarter and finally it is found that the land is being used for a different entity namely, B.M. Birla Heart Research Centre. The learned Advocate contends that the B.M. Birla Heart Research Centre is a part of the Calcutta Hospital and Medical Research Institute and in fact the said heart research institute was established as a part of expansion programme of the hospital considering the need of the city dwellers over establishment of a heart institute and hence, there is no merit in the submission of the appellants that since there has been diversification regarding use of the land, it lost the ingredient of public purpose and hence, the proceeding was bad in law. The learned Advocate has relied on the case of Gulam Mustafa and Others Vs. The State of Maharashtra and Others, , Mangal Oram and Others Vs. State of Orissa and Another, and Northern Indian Glass Industries Vs. Jaswant Singh and Others, in support of his contention. The learned Advocate submits that it has been specifically observed at page 340 of the case of Northern India Glass Industries that if the land was not used for the purpose for which it was acquired, it would be open to the State Government to take action but that did not confer any right on the owner to claim for restitution of the land.

42. Regarding the submission of the appellants on acceptance of the report of the Presidency Commissioner by the State Government in connection with issue of declaration u/s 6 of the Land Acquisition Act, the learned Advocate contends that this question cannot be raised at this stage since the appellants did not succeed to bring this fact at the time of hearing of the second writ petition by

way of amendment and on this point alone this contention of the appellants should be rejected outright. The learned Advocate contends that it will be available from the affidavit of Nisith Das, pages 275 to 278 of the paper book No. 1 that under the provisions of Land Acquisition Manual the Collector was duty-bound to forward his report to the Presidency Commissioner being the divisional head and the said Commissioner had the statutory jurisdiction to make observation on the report of the Collector and to forward the same to the appropriate department of the Government. The learned Advocate submits that the Collector after issue of notice u/s 4 of the Act invited objection and Prem Chand Gupta during his lifetime duly participated in the enquiry and after giving said Prem Chand Gupta full liberty to make out his case, the Collector prepared his report and hence, there was no violation of the principle of administrative law as sought to be raised on behalf of the appellants. The learned Advocate contends that position of law in this regard is very much clear from different decisions of the Apex Court that opportunity must be given after issue of notice u/s 4 of the Act to the owner of the land to raise any objection against the proposed acquisition scheme and there is no legal requirement for inviting further objection before issue of declaration u/s 6 of the Act and the learned Advocate in this context has referred to the decisions of the Hon''ble Supreme Court in the case of Abdul Husein Tayabali and Others Vs. State of Gujarat and Others, and Kalumiya Karimmiya Vs. The State of Gujarat and Others,

43. The learned Advocate for respondent No. 9 submits that in the first writ petition Prem Chand Gupta took a definite point that no token contribution was ever made by the State Government towards the compensation money which is a sine qua non for acquisition of a land for public purpose and it was further alleged by Prem Chand Gupta in the said first writ petition that the alleged story of token contribution was colourable exercise of power. The learned Advocate for respondent No. 9 submits that the law on this aspect has been settled in several decisions of the Supreme Court and a few of them may be mentioned here namely, the case of Indrajit C. Parekh of Ahmedabad and Another Vs. State of Gujarat and Others, and The Forest Range Officer and others Vs. P. Mohammed Ali and others, wherein it was held that a token contribution of Re. 1 from the State Revenue would be adequate to hold that acquisition was for public purpose with State Fund and hence the contribution of Re. 1 from public fund cannot be dubbed as illusory so as to invalidate the acquisition. The learned Advocate submits that the learned Single Judge in his judgement while dealing with this aspect observed that the question of payment of Re. 1 from the State Fund being a pure question of fact cannot be looked into while disposing of a writ petition and hence, it is to be presumed that the token contribution was in fact made from the public fund as required under law. The learned Advocate for the respondent No. 9 submits that when the self-same point was taken in the first writ petition and when the first writ petition was not pressed, this point cannot be raised again on the principle of public policy/ res judicata.

44. On the question of joint award as raised by the appellants, it is submitted on

behalf of the respondent No. 9 that this point was also raised in the first writ petition which was not pressed and hence, the self-same ground can no longer be raised in the second writ petition or in the present appeal. It is further submitted that the unreported decision in the case of Satyayug Employees Cooperative Industrial Society Ltd. v. State of West Bengal and Ors. and also the case of Jaydev Mallick as referred to by the learned Advocate for the appellant in fact, has no application in the present case since in the award passed in the present case there was no apportionment and the joint award was passed since the Calcutta Corporation had some dues against the land in question. Thus, the objection against the acquisition proceeding on the ground of joint award is without any merit.

45. As regards the third writ petition filed by Arvind Gupta giving rise to Appeal No. 253 of 1998 it has been submitted by respondent No. 9 that the hospital authorities were not made parties and hence, the writ petition itself was bad for non-joinder of necessary parties. It is further submitted that third writ petition was also barred by res judicata/principles analogous thereto and the third writ petition was filed after the second writ petition was dismissed and in the second writ petition the same question was sought to be raised by way of amendment which was rejected up to the Apex Court. Thus, it is submitted on behalf of the respondent No. 9 that all the points submitted in connection with F. M. A. T. No. 3031 of 1986 would also cover this appeal and accordingly, this appeal is liable to be dismissed on all those points taken by the respondent No. 9.

Findings of the Court:

46. Before considering the submissions made by the rival parties which will be material for deciding the fate of the present appeals, it would be quite relevant to mention some facts which are not disputed and those facts are as follows.

47. The notice u/s 4 of the Land Acquisition Act, 1894 was issued for premises No. 1/1, Sterndale Road, Calcutta for expansion of Calcutta Hospital and Medical Research Institute on 29th April, 1966 and after following all necessary legal formalities declaration u/s 6 of the Act was issued by the Government for expansion of the Institute on 30th July, 1968. Award regarding the acquired land was made by the Collector on 18th March, 1969. Prem Chand Gupta filed his first writ petition being Matter No. 2002 of 1969 on 28th March, 1969 and said writ petition being heard in part was not pressed on 29th March, 1976 and accordingly Rule issued in connection with the said writ petition was discharged. It is significant to mention in this context that the Urban Land (Ceiling and Regulation) Act, 1976 came into force in February, 1976 itself.

48. After withdrawal of the first writ petition without taking any leave to file a fresh writ petition with same cause of action, Prem Chand Gupta and his three sons challenged the acquisition of the land through a second writ petition being C.R. No. 10689(W) of 1981 on 25th September, 1981. In the second writ petition, the petitioners sought for amendment to bring certain alleged new facts

and the prayer of amendment was rejected by the appellate forum and even the petitioners did not succeed before the Apex Court.

49. Arvind Gupta, one of the sons of Prem Chand Gupta, since deceased, filed the third writ petition, being No. 2375 of 1986, challenging the letter of Presidency Commissioner dated 10th April, 1967 and said third writ petition was dismissed on a contested hearing on 1st February, 1988 and in the said third writ petition present respondent No. 9 was not made a party. Arvind Gupta again filed another writ petition, being Matter No. 4258 of 1988, on 3rd August, 1988 challenging the vires of the Land Acquisition Act and in that writ petition respondent No. 9 or the land acquisition authorities were not made parties. The said writ petition was ultimately dismissed on a contested hearing on 14th March, 1990.

50. From the submissions of the appellants, which have been already recorded in detail, it is clear that according to the appellants the judgement and order of the learned Single Judge dismissing the second writ petition on the ground of maintainability cannot be upheld and respondent No. 9 has strongly opposed this submission contending inter alia that the learned Single Judge was justified in dismissing the writ petition on the ground of maintainability and there was no need for entering into merits of the case.

51. From the materials placed before us during hearing of these appeals, we have/had the opportunity to go through the averments of the first writ petition as well as that of the second writ petition and in fact we have no hesitation to hold that the second writ petition is almost reproduction of the first writ petition and in this context it is quite significant to mention that attempt of the appellants to introduce certain new facts in the second writ petition by way of amendment did not succeed and hence, the learned Single Judge rightly observed that there was no scope for him to take into consideration those facts which could not be brought on record since prayer of amendment was rejected and it is further held that even at this stage while disposing of these appeals we are not legally bound to take into consideration those facts sought to be brought on record by way of amendment.

52. The appellants proceeded with the first writ petition for a considerable period of time and probably after coming into force of the Urban Land(Ceiling and Regulation) Act, 1976, the appellants decided not to proceed with the first writ petition and the appellants have come out with a story of amicable settlement behind rejection of the first writ petition being not pressed.

53. Appellants have not furnished any document whatsoever to prove the alleged story of amicable settlement and on behalf of respondent No. 9 the talk of amicable settlement has been strongly denied and in that background we do not find any reason behind withdrawal of the first writ petition by the appellant Prem Chand Gupta who did not obtain any leave from the Court to file a fresh writ petition on the self-same cause of action and it is also clear from record that the

first writ petition was not withdrawn for any technical defect.

54. In the above background we are to consider whether the learned Judge was justified in dismissing the second writ petition on the ground of public policy or on the principle akin to *res judicata*. The appellants tried to convince that once the Apex Court made an observation to dispose of the second writ petition on merit, the learned Judge should not have dismissed the writ petition on the ground of maintainability but, having regard to the provisions of law and having regard to the different decisions of the Apex Court relied on by both the sides we are of the view that when second writ petition was filed almost on identical grounds and when the first writ petition was not pressed and no leave was taken to file a fresh writ petition on self-same cause of action the learned Judge rightly dismissed the second writ petition on the ground of public policy and on the principle akin to *res judicata* and in this context we rely on decisions of the Apex Court reported in the case of *Sarguja Transport Services (supra)* and also on *Upadhya and Co. (supra)*.

55. We are unable to appreciate Mr. Saktinath Mukherjee's submission that notwithstanding the fact that the amendments sought for were disallowed by the Appeal Court and the SLP filed by the appellants was dismissed, we are still required to take into consideration the substance of the amendments which have been introduced in the proceedings by way of a Supplementary Affidavit. Such a course of action would amount to making a mockery of the order of the Appeal Court and also that of the Hon'ble Supreme Court. It may not also be out of place to mention that an application had been made on behalf of the appellant in the first writ petition for a copy of the order passed by the Collector in the proceeding u/s 5A, which would immediately indicate that the appellants had proper notice of the recommendations made upon the objection filed by the appellant.

56. We have already indicated that the notification u/s 4 of the Land Acquisition Act was issued on 29th April, 1966 followed by declaration u/s 6 of the Land Acquisition Act on 30th July, 1968 and the award was also passed on 18th March, 1969 and the second writ petition was filed on 25th September, 1981. The second writ petition was filed challenging the acquisition of the land and naturally the question would arise as to whether after a gap of 12 years a person can challenge an acquisition proceeding and on this issue the learned Judge disbelieved the explanation of the appellants behind the delay and came to the conclusion that delay of 12 years must be considered to be fatal one and on that ground alone the challenge thrown against the acquisition proceeding must be rejected. We have considered the observation of the Apex Court given time to time on the question of limitation in connection with acquisition proceeding and we find that the Apex Court was pleased to hold that if there is inordinate delay to challenge the acquisition proceeding and if no explanation is offered regarding such inordinate delay the Court should refuse to entertain the writ petition challenging the acquisition proceeding and in this context the decisions of the

Apex Court rendered in the case of Indrapuri Griha Nirman Sahakari Samity (supra) and Northern Indian Glass Industries (supra) must be referred to. Thus, in view of the admitted delay in filing of the writ petition challenging the acquisition proceeding and in view of the fact that no plausible explanation came forward behind such delay, the learned Single Judge did not commit any error in dismissing the writ petition.

57. The appellants have strongly opposed the observation of the learned Single Judge when it was held that there was question of litigated title in the second writ petition and it is accepted principle of law that no question of disputed fact can be raised or looked into in a writ proceeding. The appellants submit that there was no denial of the fact that Prem Chand Gupta was the original owner of the land and subsequently he transferred the land to the undivided family stock and it is also not disputed that notice of the acquisition proceeding was served on Prem Chand Gupta and finally, the award was also made in favour of Prem Chand Gupta along with Calcutta Corporation and in view of these undisputed facts there cannot be any substance in the contention of the learned Single Judge that no relief can be granted as there was a question of litigated title.

58. Upon examination of affidavits of respondent No. 9 and also of the State respondent filed in connection with the second writ petition on it is very much clear that Prem Chand Gupta himself and on his death his legal heirs could not produce the original title deed before the land acquisition authorities in spite of repeated requests. It is also available from the affidavit filed by the State respondent that the land in question was attached by the Income Tax department and even a suit was pending before this Court filed by adoptive father of Prem Chand Gupta claiming his title and possession over the land. The learned Judge did not commit any mistake in refusing to entertain the second writ petition on the question of litigated title in view of the materials placed before him because there was no scope for holding any enquiry on the question of title in a writ proceeding and in this context we can refer to the decision of the Hon'ble Supreme Court in the case of Bokaro and Amgur Ltd. (supra).

59. Thus, after considering submission of both the sides and having regard to the different decisions of the Hon'ble Supreme Court, we are of the considered view that no error was committed by the learned Single Judge in dismissing the second writ petition filed by Prem Chand Gupta and Ors. on the ground of maintainability because on considering of all relevant materials and in view of established legal provision the second writ petition was certainly hit by the principle of public policy or principle akin to res judicata and that apart, the second writ petition was filed at such a belated stage when no fruitful enquiry could be made regarding the alleged infirmity or illegality in the acquisition proceeding and finally, we are also satisfied that appellants did not succeed in proving a clean title to the land,

60. As the appellants challenged the acquisition proceeding from different angles and the learned senior Advocate for the appellants made detailed submission in

this regard and the learned senior Advocate for the respondent No. 9 strongly refuted all the points taken by the appellants in this regard, we propose to discuss the points taken by the parties regarding the acquisition proceeding, although we are convinced from the trend of submissions made by both the sides and on examination of the materials placed before us that on the question of maintainability alone all the connected writ petitions are liable to be rejected resulting dismissal of all the appeals.

61. It has been argued on behalf of the appellants that the acquisition proceeding was illegal and inoperative since there was no public purpose behind such acquisition and even if it is accepted that there was public purpose for expansion of the Institute, the subsequent conduct of the respondent No. 9 by establishing Birla Heart Research Centre on the acquired land has completely demolished the public purpose behind such acquisition. The respondent No. 9 has filed several documents to establish the fact that Birla Heart Research Centre is a part of Calcutta Medical Hospital and Research Institute and in fact, for expansion of the activities of the Institute, the Heart Research Centre was founded to meet the longstanding demand of the people to have a Heart Research Centre at the city and hence, there was certainly a public purpose behind the acquisition scheme and it was duly fulfilled by establishing the Heart Research Centre on the disputed land. The appellants submitted that there was deviation from the original purpose in the sense that originally the land was sought for raising staff quarters although at the initial stage the land was required for use at approach road to the Institute and thus, there was diversification from the original requirement and hence, on this ground alone the acquisition proceeding cannot be supported in law as it had no public purpose behind it.

62. We have considered the relevant materials produced by the rival parties and taking into consideration the provision of law as available from decisions of the Hon'ble Supreme Court in the case of Mangal Oram (supra) and Golam Mustafa and Ors. (supra), we are of the view that Birla Heart Research Centre is a part of the Institute and by constructing the Heart Research Centre at the disputed land the original public purpose namely, for expansion of the Institute has not been deviated at all and that apart even if there is any diversification in a narrow sense, such diversification has been made with the broad object of serving the public purpose and hence, there was nothing wrong in the notice issued u/s 4 of the Land Acquisition Act.

63. The learned senior Advocate for the appellants has argued in detail challenging the declaration issued u/s 6 of the Land Acquisition Act on the ground that such declaration was made not on the report of the proper authority under the Act, but, on the basis of report of the Presidency Commissioner, who had no authority to act under the scheme of the Act and secondly, the owner of the land was not given any opportunity to confront the report of the Presidency Commissioner before issue of the declaration u/s 6 of the Act and finally, the

basis of the report of the Presidency Commissioner that Prem Chand Gupta was not an apparent resident of Bengal was certainly an infringement of the fundamental rights of Prem Chand Gupta.

64. We have had the opportunity of going through the relevant provisions of the Land Acquisition Manual produced on behalf of the State as also the affidavits filed on its behalf, which make it clear that in terms of the procedure and the Rules of Business of the Government, the report of the hearing of the objection u/s 5A of the 1894 Act was required to be forwarded to the State Government through the Commissioner, Presidency Division. It has to be kept in mind that in keeping with the scheme of the 1894 Act, the Collector is not required to come to any decision on the objection that may be filed in respect of the notice issued u/s 4 of the said Act and that he was merely required to make recommendations for the consideration of the State Government. As a matter of administrative procedure prescribed under the Manual the Collector was required to send his report to the Commissioner who for the purpose of administrative convenience was also required to consider the recommendation, and, thereafter, to transmit the same to the State Government. In the instant case, following the above procedure, the Collector sent his recommendation to the Commissioner, Presidency Division, who recorded his comments based on the fact that Prem Chand Gupta was not available for service of notice in spite of repeated attempts. Furthermore, when Prem Chand Gupta could not produce the original title deeds of the property, no illegality can be imported into the action of the Commissioner, Presidency Division.

65. It must also be kept in mind that the observations of the Commissioner, Presidency Division, were also in the nature of recommendations and the State Government had the benefit of both the recommendations while taking a decision for the purpose of publication or the declaration u/s 6 of the 1894 Act.

66. Under the scheme of the Land Acquisition Act, 1894, Prem Chand Gupta was given an opportunity to object to the notice u/s 4 of the Act and Shri Gupta duly filed his objection and participated in the proceeding before the Collector. The Act does not provide for any further opportunity to be given to the owner by the State Government before issuing declaration u/s 6 of the Act, which is also the view taken by the Apex Court in the case of Abdul Hossain Tayab AH (supra),

67. It has been argued at length on behalf of the appellants that the alleged token contribution of Re. 1 by the State Government towards the compensation money was a colourable exercise of power and it has been argued in detail to convince us that in fact, no such contribution was ever made as alleged and on this ground the acquisition proceeding is liable to be set aside. We find from the judgement of the Apex Court given in the case of Sushil Kr. Sen (supra) that the validity of acquisition can not be determined in view of the amount of contribution but the motivation for making the contribution would help in determining the bona fides of acquisition and it was further held that even a contribution of Re. 1 from the State revenue would be adequate to hold that

acquisition was for public purpose with State Fund. The points now taken by the appellants challenging the payment of token contribution towards the compensation money from the State Fund cannot be raised at this stage when the self-same point was raised in the first petition which was not pressed subsequently and we share the view of the learned Single Judge that this question is also being a question of disputed fact should not be looked into in a writ petition.

68. The appellants have also raised a question that the acquisition proceeding cannot also be supported in law having regard to the joint award made in the name of Prem Chand Gupta and the Calcutta Corporation. As noticed earlier, the first writ petition was filed on 20th March, 1969, while the Collector made his award u/s 11 of the Land Acquisition Act, 1894, on 18th March, 1969. After the first writ petition was abandoned it was no longer available to the appellants to raise the same question again that too for the first time during the hearing of the appeal.

69. We have considered the decision rendered in the unreported case of Satyayug Industrial Estate Limited v. State of West Bengal, relied upon by the appellants, and on such consideration we find that the ratio of the decision in the said case cannot be applied to the facts of the present case, inasmuch as, there was no co-owner on record claiming the compensation money and only the dues of the Calcutta Corporation were taken into consideration at the time of passing of the award. Furthermore, in our view, invalidity of the award cannot effect vesting of the property once the acquisition proceedings were concluded.

70. Thus, both on the question of maintainability and also on the question of merit, after considering the submissions of both the sides and after taking into consideration the written arguments produced by the parties, we are of the view that the judgement and order of the learned Single Judge recorded in connection with writ petition, being C.R.No.10689(W) of 1981, cannot be interfered with, and, accordingly, there is no merit in F. M. A. T. No. 3031 of 1986.

71. Regarding the third writ petition filed by Arvind Gupta, being Matter No. 2375 of 1986, it would suffice to mention that this writ petition is also hit by the principle of public policy and by the principle akin to res judicata and the writ petition is also not maintainable due to inordinate delay. The grounds taken in this writ petition were also taken in the second writ petition and our discussions recorded hereinabove regarding the second writ petition would also decide the fate of this writ petition and accordingly, we do not find any merit in Appeal No. 253 of 1988 preferred over rejection of this writ petition. Regarding the 4th writ petition being Matter No. 425 of 1988 giving rise to Appeal No. 375 of 1996, we have mentioned at the outset that this appeal was not ultimately pressed before us and that apart we find that the Hon'ble Supreme Court already held in the case of Bai Malimabu and Others Vs. State of Gujarat and Others, and in the case of Manubhai Jehtalal Patel and Another Vs. State of Gujarat and Others, that there is no substance behind the challenge thrown against the vires of the Land

Acquisition Act and that being the position we hold that there is no merit in the writ petition and accordingly, no merit behind the appeal also.

Order:

72. In view of our discussion recorded hereinabove, we hold that there is no merit in the writ petition, being C.R.No.10689(W) of 1981, Matter No. 2375 of 1986 and Matter No. 4258 of 1988, and there is no scope of interference with the judgement and order recorded in those proceedings, and accordingly, F. M. A. T. No. 3031 of 1986, Appeal No. 253 of 1988 and Appeal No. 375 of 1996 are liable to be dismissed and are dismissed accordingly. All connected applications, if any, stand disposed of. There will, however, be no order as to costs.

73. All parties to act on the signed copy of the operative portion of this judgment and order on usual undertaking.

74. Stay as prayed for is considered and rejected.