Civil Appeal
Present: The Hon'ble Justice Kalyan Jyoti Sengupta
And
The Hon'ble Justice Md. Abdul Ghani

F.M.A. 952 of 2005
In connection with
M.A.T. 787 of 2005
Arising out of
[W.P.No. 22869 (W) of 1997, C.A.N. 1814 of 2004]

Judgment on: 13.04.2010.

Amal Bhusan Chatterjee and ors
Vs.
State of West Bengal and ors

POINTS:
ACQUISITION-Power of the State Government to acquire the land at the requisition of the statutory body-Two Acts in operation-One Act found to be onerous- State Government to decide which of the two Act to be adopted-Non- receipt of compensation, whether renders requisition and acquisition illegal and invalid--Land Acquisition and Requisition Act 1948, Act II of 1948, S.18

FACTS:
The petitioner purchased the said land for his residential purpose. Immediately, thereafter, the petitioner got his name mutated in the records of right both in Revenue Department and Kolkata Municipal Corporation and also, paid due Municipal rates and tax in the Revenue Department. The petitioner had not been residing in Calcutta as he had been working in the Merchant Navy in 1971 as such he was posted outside India till 1983. The said plot was acquired by the State Government for the need C.M.D.A. (now K.M.D.A). The petitioner affected by the order of requisition followed by acquisition of his small plot of land under the provisions of Land Acquisition and Requisition Act 1948, Act II of 1948 brought the instant action. The instant appeal impugns the judgment and

order of the learned Single Judge whereby and whereunder the writ petition of the appellant was dismissed.

HELD:

In view of savings section of the Act taken under the Repealed Act under 1979 Act the action taken earlier does not become invalid. The repealing of the earlier Act of 1972 by the later one the power of the State Government to acquire the land at the requisition of the statutory body under the existing law is not taken away. Only thing is that the statutory presumption of public purpose in that case is not presumed to be exists. Para-39

In order to achieve the same object if two Acts are in operation and if one of such Act is found to be onerous the same cannot be constitutionally valid under Article 14 of the Constitution of India. The issue of the constitutional validity of Act II of 1948 is no longer res integra , for Supreme Court has already upheld the vires of the Act II of 1948. Once an Act is found to be constitutionally valid bogey of hardship and onerousness has no place. Under such circumstances, the application of Act II of 1948 in this case is not illegal. When two Acts for acquisition are available it is for the State Government given on peculiar facts and circumstances of each case, to decide which of the two is to be adopted and it is not for the individual citizen to question it as the acquisition is made by the Government for public purpose which overwhelms the individual need or requirement. Hence this contention is hit by principle of constructive res judicata. Para-40

When validity of any Act or action is taken and the Supreme Court upheld the same it shall be presumed that Supreme Court must have examined all the possible issues. No piece meal challenge of any left out issue against any executive action or legislative action later on is permissible.

Para-41

The learned Trial Judge has not correctly recorded the findings on the aspect of payment of compensation. The learned Trial Judge ignored the admitted fact of non-receipt of compensation amount by petitioner in the affidavit of the state officials. But non-receipt of the amount of compensation does not render requisition and acquisition being illegal and invalid. The Court, therefore, directs the Government to make payment of the entire amount of award with interest and other admissible payment under law. The Court, therefore, does not accept the findings of the learned Trial Judge to that effect. Para-42

CASES CITED:

1) 1983 (1) CLJ page 371

2) State of West Bengal v. Shefali Roy and others AIR 1995 Cal page 86.

3) Swaraj Mal Mahato v. Biswanath Sarkar AIR 1954 SC 545.

4) State of West Bengal v. Anwar Ali Sarkar and another [AIR 1952 SC 75]

5) AIR 1993 SC 953, 1999 (1) CLJ 353

6) AIR 1952 Calcutta 781, 2002 (2) CHN 522

7) AIR 1997 SC 123

8) State of Tamil Nadu v. L. Krishnan AIR 1996 SC 497

9) Nil Kamal Bejbaruah v. State of West Bengal and others AIR 1982 Calcutta 180

10) 2005 1 SCC 558

11) 2003 11 SCC 456

12) 2008 4 SCC 695

13) 2003 5 SCC 365

14) AIR 2000 SC 671

15) 1995 4 SCC 683

16) 1997 7 SCC 544

17) State of Maharashtra v. Digambar (1995) 4 SCC 683

18) Municipal Council, Ahmednagar and another v. Shah paragraph 17

19) C. Padma v. Deputy Secretary to the Government of Tamil Nadu (1997) 2 SCC 627

20) Swaika Properties Private Limited and another v. State of Rajasthan and others (2008) 4 SCC 695.

21) Ahuja Industries Limited v. State of Karnataka and others (2003) 5 SCC 365

22) Bengal Peerless Housing Development Company v. Gopeswar Prasad Agarwal and others (2002) 2 CHN 522

23) Suraj Mall Mohta and Co. v. A.V. Visvanatha Sastri and another, AIR 1954 SC 545

For the Appellants: Mr. Soumen Bose,
Mr. B.N. Mitra,
Mr. Manash Ghosh,
Mr. Arijit Banerjee.

For the K.M.D.A.: Mr. P.S. Basu,
Mr. Fazlul Haque.

For the State: Mr. A.N.Banerjee,
Mr. S.S.Roy Chowdhury.

For Respondent No.12: Mr. P.P. Banerjee,
Mr. A. Kar,
Mr. Subhendu Nag.

For K.M.C.: Mr. Dipankar Chakraborty,
Mr. Sima Chakraborty.

THE COURT:

1) The instant appeal impugns the judgment and order of the learned Single Judge Dated 10th February 2005 whereby and whereunder the writ petition of the appellant was dismissed with costs assessed at Rs. 15,000/-.

2) The petitioner affected by the order of requisition followed by acquisition of his small plot of land under the provisions of Land Acquisition and Requisition Act 1948, Act II of 1948 (hereinafter referred to 1948 Act) brought the action as above.

3) The short fact of the case for which above writ petition came to be filed is stated hereunder:

The petitioner/appellant purchased for his residential purpose the said land in question bearing plot No. 2646 under R.S. Khatian No. 1611 within Mouza – Kasba, JL No. 13 in the District of 24 Parganas (South) from one Arun Kumar Chatterjee and Nil Ratan Chatterjee on 16th of November 1976. Immediately, thereafter, the petitioner got his name mutated in the records of right both in Revenue Department and in the records of Kolkata Municipal Corporation. The petitioner, thereafter, paid due Municipal rates and tax in the Revenue Department. To substantiate factum of mutation and payment of rates and taxes he has annexed 11 documents with the writ petitions. The petitioner had not been residing in Calcutta as he had been working in the Merchant Navy in 1971 as such he was posted outside India till 1983. Immediately before filing of the writ petition, the petitioner came to India to see his relation and to see the said land. At that time he came to know from rumours of the locality that the Calcutta Metropolitan Development Authority made some small plots comprising land of the petitioner on removing structure. He, thereafter, made enquiry and came to learn further that the said plot was acquired by the State Government for the need C.M.D.A. (now K.M.D.A). At the office of the K.M.D.A., the petitioner was shown a copy of the notification issued on 29th November 1983 under No. 8290 L.A. II dated 21st November

1983 under Act II of 1948 whereby aforesaid land of the petitioner has been acquired. The petitioner till the date of filing of the writ petition did not receive any copy of the order of requisition or acquisition as required to serve under Sections 3 and 4 of Act 1948. Petitioner was completely in dark and no notice was served upon him either for requisition or acquisition. The said requisition was made without any public purpose within the meaning of the said Act. The 1948 Act at present no longer exists. It was enacted for temporary purpose for acquisition and requisition of the land and the effect thereof expired on 31st March 1976. However, there has been reenactment Act of 1977 for the same purpose and new Act came into force on 1st April 1977. This reenactment Act of 1977 does not revalidate the deed and act done under Act of 1948 as the said provisions of the said Act are no longer in existence on the expiry of 31st March 1977. The entire acquisition and requisition is bad in law even no notice was given for passing award and no compensation was paid earlier.

4) The said writ petition was opposed by State of West Bengal and K.M.D.A. The point of opposition in sum and substance is that the vast area was sought to be required for the purpose of development works to be undertaken by the K.M.D.A. and as such the Government was moved for acquisition of the land. Thereafter, the Government under the provision of Act 1948 the vast area including the plot of the petitioner was initially requisitioned lawfully and then on service of due and valid notice acquisition was made. This was completed long time back in 1983. The award was passed and even compensation money was paid and 80 per cent of the amount of compensation was received by the learned Advocate engaged by the writ petitioner. Obviously there has been inordinate delay to challenge the said requisition and acquisition and also the question of estoppel, acquiescence are staring against the petitioners. In the instant case, the address of the petitioner could not be found and furthermore at the said plot of land there had been no structure but at a

conspicuous place notice was affixed and even by substituted service in the official gazette the said notice was issued. In spite of the same no objection was filed.

5) It appears from the impugned judgment and order that learned Trial Judge had proceeded on the question of service of notice and also on payment of compensation. The learned Trial Judge while rendering decision considered the relevant record produced before His Lordship. It was found by His Lordship that statement made as regard payment of compensation to the petitioner is not correct and subsequently, by filing supplementary affidavit the said incorrect statement was corrected.

6) On perusal of the record the learned Trial Judge found that the notice was served as per the provision of law. It was observed that under the Evidence Act the presumption of official Act in usual course of business has to be drawn that such Act has been done. Learned Trial Judge in spite of noting the records and having noted the statement and averment of the supplementary affidavit finally came to the conclusion that compensation amount through his learned lawyer was received by him. Once the petitioner accepted such compensation even if there was any irregularity in the requisition and acquisition proceedings same ought to be treated to have been waived although there is no such irregularity in this case.

7) It further appears that requisition proceeding was initiated in the year 1978 and acquisition was made in 1983. After long 14 years the action has been brought against the said Act of requisition and acquisition. Therefore, the learned Trial Judge basically on the point of delay and laches dismissed the writ petition.

8) After the appeal was preferred the respondent No.12 was added as a party respondent as he was the allottee in respect of the portion of land claimed by the petitioner. Subsequently, it appears apart from the grounds taken in the Memorandum of Appeal, by the leave of the Court new legal

ground has been taken as regard the validity and legality of the requisition and acquisition with reference to provision of Section 18 of the Calcutta Metropolitan Development Authority Act 11 of 1972 and Section 142 of the West Bengal Town and Country Planning Act 1979 (hereinafter Act 1979).

9) Mr. Soumen Bose learned Senior Advocate, appearing in support of the appeal questions the impugned judgment and order, and contends as follows:-

10) Admittedly, the appellant/writ petitioner is the owner of the said plot of land and it was in the records of the Revenue Department that he had become the successor-in-interest of the said plot of land and also in the Municipal records. In the Municipal records and in that of the Revenue Department mailing address was mentioned. In spite of that no notice of requisition or acquisition was served. He contends that the learned Trial Judge has dismissed the writ petition on ground of delay and basing on contradictory findings. In the supplementary affidavit it has been admitted that no compensation was paid and overlooking this admitted position that learned Trial Judge came to fact finding that 80 per cent of compensation was paid to the petitioner. According to him service of notices as sought to be done was not the proper and lawful. Notification in the Calcutta Gazette is not legal compliance as regard mode of service.

11) He further contends that from the information received from K.M.D.A. the said land was sought to be acquired under the provision of Section 18 of the Calcutta Metropolitan Development Authority Act 11 of 1972. According to him at the relevant point of time this section enabling to acquire land was repealed by the subsequent Act 1979 and it was not validated and as such acquisition done as per version of the K.M.D.A., is without any authority of law.

12) He submits that service of notice under Section 3 of Act 1948 is mandatory requirement and he strongly places reliance on the decision reported in 1983 (1) CLJ page 371, non service of such notice vitiate the proceedings.

13) He also submits that the mode of service of notice should be ordinarily a personal one and in this context he has relied on a decision of the Division Bench of this Court in case of *State of West Bengal v. Shefali Roy* and others reported in AIR 1995 Cal page 86 which affirms decision of the Learned Single Judge. It was held that service of notice of requisition on the caretaker of the owner of the land does not suffice and service of notice upon the owner is mandatory if the owner is present at the mailing address and thereafter, there may be substituted service or other mode of service such as service by registered post, service upon the agent of the owner.

14) He further submits that there was no need to acquire the land under the draconian provision of 1948 Act as there was no such emergent situation and the acquisition could have been done by the ordinary law under the provisions of Act of 1894. Had the provision of 1894 Act been resorted to then petitioner would have got right of objection whereas in case of 1948 Act there was no scope for objection before issuance of notification for acquisition.

15) He further submits on the principle of law that there has been discrimination as the onerous provision of the law is made applicable in case of the petitioner. In this connection he has brought to the attention of the Court of the Supreme Court decision in the case of Swaraj Mal Mahato v. Biswanath Sarkar reported in AIR 1954 SC 545. According to him this onerous provision of the Act namely 1948 is ultra vires under Article 14 of the Constitution. On the question of onerous provision of law he has cited the decision of the Supreme Court rendered in case of State of West Bengal v. Anwar Ali Sarkar and another [AIR 1952 SC 75] as the onerous provisions of the law takes away the opportunity of being heard.

16) On the question of delay he has submitted that in this case there could not be any question of delay or estoppel as only in 1987 the appellant petitioner came to know about fact of requisition or acquisition.Although this could have been brought to the knowledge of the petitioner by serving notice at his mailing address given in the Revenue Record Department. Immediately thereafter, he filed the writ petition. Therefore, ignorance of fact of requisition of petitioner is not due to his own fault as he was not in the country. This delay is not a fatal particularly when the petitioner challenges the constitutional validity of the requisition and acquisition.

17) Apart from relying on the aforesaid decisions following decisions are also cited in support of his argument :-

AIR 1993 SC 953,1999 (1) CLJ 353, AIR 1952 Calcutta 781, 2002 (2) CHN 522, and AIR 1997 SC 123.

18) Mr. A.N. Banerjee learned counsel for the State-respondent submits that large plot of land was requisitioned at the instance of the K.M.D.A. (then C.M.D.A.) and the petitioner's land is a portion thereof. Due and proper notice was served when it was sought to be requisitioned followed by acquisition.

19) This writ petition has been filed after 19 years of requisition and 15 years of acquisition and after 14 years of declaration of award which was done in 1983. During all these year the petitioner allowed the respondent to complete proceedings and ultimately, petitioner's land has vested unto State and possession was handed over to the requiring body. The land was requisitioned and then acquired for the public purpose namely construction of a project which is beneficial for the public at large and such project is now complete and the third party's right has been created. In this circumstances, the challenge after inordinate delay against the acquisition and requisition has not been permitted by Supreme Court in case of Hari Singh reported in AIR 1984 SC 1020. If at this

stage on the ground of alleged irregularity in the service of notice proceedings is quashed then there would be serious public prejudice, and on that ground above this appeal must be dismissed.

20) He further submits that in the case of *State of Tamil Nadu v. L. Krishnan* reported in AIR 1996 SC page 497 the Supreme Court has held that even non-compliance of any provision of an Act in completion of any proceeding is not fatal and not tenable because of this delay in challenge of the same. In such a situation this has been held by the Apex Court that even non-service of notice cannot vitiate such proceeding.

21) Mr. Banerjee further submits that service with the mode adopted here is perfectly good and such service has been accepted by the judicial pronouncement and one of such judicial pronouncement is in case of *Nil Kamal Bejbaruah v. State of West Bengal and others* reported in AIR 1982 Calcutta at page 180. This view of the learned Single Judge has also been affirmed in appeal which is also reported decision in AIR 1982 Calcutta page 509. Even going by the statement averment of the writ petition the explanation sought to be given for delay is unbelievable. There is no particular date as to when he came to know and such statement and averment is absolutely vague. It is always open for the State to recourse to any of the acquisition law depending upon necessity and exigency of each and every situation. This proposition of law has been settled by this Court as well as the Supreme Court reported in AIR 1972 Calcutta. The provision of Act 1948 has been declared to be intra vires in S.M. Nandy's case (AIR 1971 SC page 961).

22) He submits that reference to C.M.D.A. (now K.M.D.A.) Act or for that matter 1979 Act is wholly misplaced as the requisition had been done before this Act came into force. Under Section 45 of the 1979 Act the authority has been empowered that, if necessary, where any scheme has been framed under this Act it may be acquired under Act I of 1894. It is thus clear that the language of said Section 45 is enabling one and it is the discretion of the authority whether the Act

I of 1894 was resorted or not. Neither the petitioner nor any other person has pleaded that the project in the instant case is 1979 Act. He summarized this argument that it was a valid requisition and acquisition proceeding; notices were duly served both for acquisition or requisition upon all the owners and occupiers, acquisition notice under Section 4(1a) was duly published in gazette which amounts to valid service.

23) Learned Counsel Mr. P.S. Basu for the KMDA submits that this challenge almost after 14 years against this requisition and acquisition has rightly been dismissed by the learned Trial Judge. Entertaining of such delayed action after vesting of the property should always be discouraged if not forbidden in view of consistent pronouncement of Hon'ble Apex Court. He has relied upon the following decisions in support of his submission (2005) 1 SCC 558, (2003) 11 SCC 456, (2008) 4 SCC 695, (2003) 5 SCC 365, AIR 2000 SC 671, (1995) 4 SCC 683 and (1997) 7 SCC 544.

24) Learned counsel Mr. A.C. Kar with Mr. Pratik Prakash Banerjee appearing on behalf of the respondent No.12 has not only supported the contention and submission of the State-respondent and KMDA but they say also that the writ proceedings involved disputed question of fact and it should not be decided more so when there is a pending suit covering the question involved herein. According to the petitioner the alleged property was purchased by him on 16th November 1976 and in 1979 his name was mutated and this was effected in July 1997. It appears from the records further that the mutation certificate was granted by Municipal Authority in respect of the land in question on 29th September 2000. Moreover, factually it is difficult to identify the property having reference to the mutation certificate issued by the Municipal Authorities. From the records of the Government it could be found that the possession of the plot of the land in question along with other plots were taken on 15th May 1978 and it was notified to be acquired on 25th November 1983. The notice was published in the official gazette on 7th September 1977. Publication in the official

gazette is deemed service on the petitioner. Therefore, the petitioner had notice of acquisition on 29th November 1983. Inordinate delay is glaringly stands in the way. His client has accepted the allotment on the basis that land is vacant, nobody was and still in possession except State and the KMDA. Therefore, the claim of possession with the writ petitioner is patently incorrect.

25) We have heard the learned Counsel for the parties and we have carefully gone through the judgment of the Hon'ble Trial Judge and also the records. It appears that the learned Trial Judge had dismissed the writ petition broadly on the following grounds:-

(i) The petitioner has received compensation amount through the learned Advocate, as such the challenge against the acquisition is not maintainable applying the principle of estoppel.

(ii) The notice for requisition followed by acquisition was duly served by the mode of affixation as the petitioner could not be found at his mailing address. Over and above the writ petition has been filed after 14 years from the date of acquisition.

26) It further appears that learned Trial Judge has refused to accept the supplementary affidavit filed through the constituted Attorney of the writ petitioner, as the learned Trial Judge is of the view that the constituted Attorney would not have any knowledge of fact of engagement of Advocate by the petitioner nor that of amount having been received by the petitioner. On the ground of the defective verification learned Trial Judge rejected the affidavit of the constituted attorney wherein it is emphasized that compensation amount was never paid nor any advocate was engaged by the petitioner.

27) After the appeal was filed in this case with the leave of the Court additional ground is taken as contended by Mr. Bose on the question of law only. We think that the plea of additional ground will be dealt with after the basic grounds on which the writ petition dismissed are considered. Admittedly, the writ petition has been filed almost after 14 years as acquisition proceedings

preceded by requisition under Act II of 1948, was in 1983. The learned Trial Judge has disbelieved the case made out by the petitioner, of ignorance.

28) In the context of the aforesaid time gap the petitioner has sought to explain contending that the petitioner has been working in the Merchant Navy for the last 26 years and as a Navy Officer he spent most of his time from 1971 to 1983 outside India. In 1984 the petitioner was transferred to Bhabanagar in Gujrat and he remained there till 1988. Then again he was posted at Bombay Port and had been working there till 1997. In paragraph 11 of the writ petition it is said that the petitioner recently came to Calcutta to see his relation and to look after the said land and came to learn from rumours of the locality that the Calcutta Metropolitan Development Authority made some small plots on the land of the petitioner on removing the structure.

29) It is an admitted position that the petitioner after purchase of the said plot of land got his name mutated in the Revenue Department as well as the Municipal Department so he had occasion to come to Calcutta. It is also claimed of course, without any evidence that the plot in question was utilized by erecting a structure. Upon his own saying the petitioner used to come to Calcutta, as such he had occasion to see the plot in question. Significantly, petitioner has not said when he came to know about notification of acquisition. According to the petitioner/appellant that the Collector is having knowledge of mailing address of the petitioner and in spite of that no notice was served. In the petition there is no averment to that effect nor any document to show that petitioner's mailing address was communicated to the Collector. The learned Trial Judge recorded in the impugned judgment/order while reading the records that notice was served by affixation as mailing address of the petitioner could not be found.

30) Two questions are interlinked on the delay, laches and non service of notice. It is difficult to believe on the given fact as stated in the writ petition the writ petitioner will not be aware of the

notice of requisition and acquisition. As such, as rightly argued by Mr. Banerjee and also observed by the learned Trial Judge, the petitioner is guilty of laches and delay. In particular when the award has been passed land has been vested and creation of third party right namely firstly in favour of KMDA and then respondent No.12. Mr. P.S. Basu and Angshunath Banerjee learned Advocates have drawn the attention of this Court on the given facts above to consistent views of the Supreme Court.

31) In case of *State of Maharashtra v. Digambar* the Three Judges' Bench of Supreme Court reported in (1995) 4 SCC 683 has recorded a note of caution that the power of the High Court which is a discretionary one must be exercised judiciously and reasonably so much so that such power, if exercised admits of no controversy. While exercising discretion the Court must be fully satisfied there exists no laches nor undue delay in approaching the court, the relevant portion of paragraph 14 of the judgment is as follows:-

> "……The High Court before granting such relief is required to satisfy itself that the delay or laches on the part of a citizen or any such person in approaching for relief under Article 226 of the Constitution on the alleged violation of his legal right, was wholly justified in the facts and circumstances, instead of ignoring the same or leniently considering it. Thus, in our view, persons seeking relief against the State under Article 226 of the Constitution, be they citizens or otherwise, cannot get discretionary relief obtainable thereunder unless they fully satisfy the High Court that the facts and circumstances of the case clearly justified

> the laches or undue delay on their part in approaching the Court for grant of such discretionary relief……..."

32) In the case of *Municipal Council, Ahmednagar and another v. Shah. Hyder Beig and others* two Judges' Bench of the Supreme Court in paragraph 17 of course on different factual context relying on the earlier decision of the Supreme Court in case of *C. Padma v. Deputy Secretary to the Government of Tamil Nadu* reported in (1997) 2 SCC 627 held that after the award is passed no writ petition can be filed challenging the acquisition notice or against any proceeding thereunder. In this very judgment the Supreme Court has reiterated that delay in invoking the extraordinary jurisdiction under Article 226 is a factor which could hardly be ignored. The same view has been adopted in the case of *Swaika Properties Private Limited and another v. State of Rajasthan and others* reported in (2008) 4 SCC 695. In this case, the Supreme Court while considering all the earlier decisions of the Apex Court accepted the said principle. In this case, as we noticed so also appropriately pointed out by Mr. Angshunath Banerjee the writ petitioner himself is in dark when he came to know for the first time far less specifically stating in the writ petition. Any vague statement on a relevant fact particularly on the point of knowledge which reckoning factor for limitation, is serious and incurable, and court can hardly believe such a statement. From 1988 till 1997 simply there has been no explanation as such this delay has become very fatal in this case particularly when there is no case of fraud for which the petitioner was prevented from approaching the Court.

33) Moreover, under the law in ordinary course going by the principles of law settled by the Supreme Court no acquisition proceeding can be challenged after award is passed and vesting is

over, here is such exact situation factually. It is noted in all the judgments rendered by the Supreme Court the service of notice was not in question. According to us, if no notice is served by the Collector obviously, either requisition or acquisition becomes voidable. If the point of non-service of notice is taken by the person affected entire proceeding becomes void ab initio for without a notice as required to be served under the statute concerned. Such requisition followed by acquisition proceedings cannot be upheld by any court of law. Here it is said that no notice was served at the mailing address. As it has been noted by the learned Trial Judge after perusing the old records of the Government that the notices were served by affixation as the mailing address could not be found. The Government's action in usual course of business is presumed to be correct unless the same is rebutted. I do not find except statement on oath, any material evidence has been produced before the learned Trial Judge that the Collector was supplied with the mailing address of the petitioner. It is true that the petitioner has got the mutation and his mailing address might have been found from the Municipal Records or from Land Reforms Department. According to us, these are not the sufficient material to hold that the Collector had knowledge of mailing address. The Supreme Court as pointed out by Mr. P.S.Basu in the judgment in the case of *Ahuja Industries Limited v. State of Karnataka and others* reported in (2003) 5 SCC 365 that Collector is not obliged to make roving enquiry about the ownership of the land to serve notice upon the person concerned. When the notification issued in official gazette as rightly pointed out by Mr. A.C.Kar it is a constructive notice and on receipt of such notice one could take action easily. In this case, admittedly, acquisition notice was issued in 1983 and prior thereto there was a notice of requisition in 1977. The petitioner's own case is that there has been a structure so it is quite possible to serve the notice by affixation. Under such circumstances, when on fact learned Trial Judge found that the

notice is served by affixation and it is one of such mode of service as recognized by concerned statute, I do not think that in absence of personal service there is any infirmity of service of notice.

34) Mr. Bose Senior Advocate appearing for the appellant relying on a Division Bench judgment of this court reported in case of *State of West Bengal v. Shefali Roy* submits that notice has to be served upon the owner and it has to be addressed to the owner. In that case (reported in AIR 1995 Calcutta 86) it was found on fact by their Lordships the notice was not addressed in the name of the owners. It was held service must be addressed to the owner himself not the Durwan nor Caretaker. In this case, nowhere it is alleged that the notice was addressed to the owner rather it is not known at all to the petitioner to whom the notice was addressed. From the record it has been established before learned Trial Judge notice was indeed addressed to the owner however mode of service was by affixation. Under this circumstances, the Division Bench judgment on the question of service of notice is hardly any relevance. On the other than in case of Bengal Peerless Housing Development Company v. Gopeswar Prasad Agarwal and others reported in (2002) 2 CHN page 522 the Division Bench of this Court in paragraph 28 it is held that the Rule 3 of the 1948 Rules provides for four different methods of service and such mode is independent of the other. In other words, the four methods prescribed are disjunctive and any of the four methods of service can be resorted to for the purposes of sub-section 1 of Section 3 of Act II of 1948. This judgment was rendered taking note of the text of the relevant Rule 3 which is set out hereunder:-

> **"3. Manner of Service of Orders.-** An order under sub-section (1) of section 3 shall be served on the owner of land and where the order relates to land in occupation of an

occupier not being the owner of the land, also on such occupier –

(a) by delivering or tendering a copy thereof, endorsed either by the person authorised by the Act to make the order or by the Collector, to the person or whom the order is to be served or his agent, or

(b) by fixing a copy thereof on the outer door of some conspicuous part of the house in which the person on whom the order is to be served ordinarily resides or carries on business or personally works for gain, or

(c) by sending the same to the person on whom the order is to be served by registered post with acknowledgment due, or

(d) by fixing a copy thereof in some conspicuous part of the land to which the order relates and also in some conspicuous place of the office of the Collector.**"**

36) The decision of the learned Single Judge in case *Tarak Nath Sen's* case reported in 1983(1) CLJ page 371 held that notice of requisition under the Act II of 1948 has to be issued in the name of the owners and has to be served upon owners. According to us, the method of service of notice has been provided in statute and one of the method is good enough if it is sought to be addressed and notified to the owners. In this case, from the record it appears so. Under such circumstances, we do not find any infirmity. The decision of the learned Single Judge in case of *Nirmal Kumar Sarkar, Collector of Hooghly* cited by Mr. Soumen Bose [1999 (1) CLJ 350] has taken the same

view and the same is not applicable in the facts and circumstances of this case as it is not the case of the petitioner/appellant that it was not addressed to or sought to be served upon the petitioner. It is the case of the petitioner that no notice was served, but when it is established from the official records that name of the statutorily recognized mode has been resorted to regarding service of notice the said judgment is of no help at all.

37) The new ground taken after preferring appeal is that since the requisition followed by acquisition is sought to be made at the instance of the CMDA (now KMDA) the same must be done under the provision of the Calcutta Metropolitan Development Authority. Section 18 of the said Act has been referred to which is quoted hereunder:-

> "**Section 18 – Compulsory acquisition of land for Metropolitan Authority.-**
>
> Any land required by the Metropolitan Authority for carrying out its functions under this Act shall be deemed to be needed for a public purpose and such land may be acquired by the State Government in accordance with any law for the time being in force."

38) We fail to understand why this provision has been resorted to for the scope of the said section is that whenever any land is required by this body it shall be deemed to be public purposes as such statutory presumption of public purpose is afforded and no action can be brought questioning public purpose if the land is sought to be required by this statutory body. This section of the Act

nowhere gives independent power to acquire land and such acquisition of the land is to be made by the State Government by or under any appropriate legal method. It is contended that in view of the said Act having been repealed by the Act 1979 the acquisition of the said Act having been done in 1983 for the benefit of the KMDA (previously CMDA) is invalid. We are not really impressed with this piece of argument advanced by Mr. Bose:

39) Firstly on fact as it has been stated in the affidavit of the State Government when the 1972 Act was in force the requisition was made under Act II of 1948 followed by acquisition of course later and validity of this Act was extended from time to time till 31st March, 1989. In view of savings section of the Act taken under the Repealed Act under 1979 Act the action taken earlier does not become invalid. We are of the view the repealing of the earlier Act of 1972 by the later one the power of the State Government to acquire the land at the requisition of the statutory body under the existing law is not taken away. Only thing is that the statutory presumption of public purpose in that case is not presumed to be exists.

40) Next point taken that provision for acquisition of land under Act II of 1948 is unconstitutional as in case of Act I of 1894 there has been a scope for raising objection under Section 5A whereas in case of former none. In order to achieve the same object if two Acts are in operation and if one of such Act is found to be onerous the same cannot be constitutionally valid under Article 14 of the Constitution of India. We find that issue of the constitutional validity of Act II of 1948 is no longer res integra as correctly urged by Mr. Angshunath Banerjee, for Supreme Court has already upheld the vires of the Act II of 1948. Reference is drawn to the decision of the Supreme Court in the case of S.M. Nandy (AIR 1971 SC 961). Once an Act is found to be constitutionally valid bogey of

hardship and onerousness has no place. Under such circumstances, the application of Act II of 1948 in this case is not illegal and this issue has also been decided in a judgment of this Court reported in AIR 1972 Calcutta page 8. When two Acts for acquisition are available it is for the State Government given on peculiar facts and circumstances of each case, to decide which of the two is to be adopted and it is not for the individual citizen to question it as the acquisition is made by the Government for public purpose which overwhelms the individual need or requirement. Reference is also drawn to Supreme Court decisions rendered in case of *Suraj Mall Mohta and Co. v. A.V. Visvanatha Sastri and another* reported in AIR 1954 SC 545 wherein challenge against the Act II of 1948 is set at rest. Hence in our view this contention is hit by principle of constructive res judicata.

41) We are of the opinion when validity of any Act or action is taken and the Supreme Court upheld the same it shall be presumed that Supreme Court must have examined all the possible issues. No piece meal challenge of any left out issue against any executive action or legislative action later on is permissible. Under this circumstances, we do not find any substance in the submission of the appellants.

42) However, we notice that the learned Trial Judge has not correctly recorded the findings on the aspect of payment of compensation. The learned Trial Judge ignored the admitted fact of non-receipt of compensation amount by petitioner in the affidavit of the state officials. But non-receipt of the amount of compensation does not render requisition and acquisition being illegal and invalid. We, therefore, direct the Government to make payment of the entire amount of award with interest and other admissible payment under law. This shall be paid within a period of two months from the

date of communication of this order and it would be open for the petitioner to challenge the award if not satisfied by making a reference to the Court if it is done within one month from the date of receipt of this order to the Collector who shall refer the matter to the concerned learned Judge. We, therefore, do not accept the findings of the learned Trial Judge to that effect.

43) We do not find any reason to award costs of Rs. 15,000/- in this case awarded by the learned Trial Judge for the issue involved in this case cannot be viewed as vexatious or frivolous to justify awarding exemplary costs, accordingly portion of the cost is also set aside. Therefore, the appeal is disposed of with the aforesaid directions and orders and affirming the judgment and order of the learned Trial Judge except the portion above.

44) No order as to costs.

(Kalyan Jyoti Sengupta, J.)

45) I agree.

(Md. Abdul Ghani, J.)