REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 461 OF 2009

KOLKATA METROPOLITAN DEVELOPMENT AUTHORITY ... **APPELLANT**

VERSUS

PRADIP KUMAR GHOSH & ORS. ... **RESPONDENT**

J U D G M E N T

ARUN MISHRA, J.

1. Aggrieved by the quashing of land acquisition proceedings initiated under the West Bengal Land (Requisition and Acquisition) Act, 1948 (hereinafter referred to as "the Act") notice under section 4(1)(a) was published in the Gazette on 14.10.1996 and also notice under section 5 of the Act. The property in question had been requisitioned under the provisions of the Act by the issuance of notification under section 3(1) since requisition continued for long

for 14 years. It was questioned by filing a writ petition *i.e.* CR 15177 (W) of 1979 disposed of on 10.9.1993. The High Court of Calcutta did not quash the notification issued under section 3(1), passed an order directing the concerned authorities to acquire the properties in question if so desired within a period of 6 months from the date of communication of order and if the authorities did not acquire the property within the time specified the Land Acquisition Collector was directed to release the property under requisition and restore possession of the same to the writ petitioner.

2. Thereafter there was some delay in initiating the land acquisition proceedings. The notification under section 4(1)(a) of the Act had been issued on 14.10.1996 for the acquisition of premises No.11, Sarat Bose Road, Kolkata. Questioning the same, fresh petition – Writ Petition No.4361 (W) of 1997 was filed. Award was passed determining the compensation in a sum of Rs.7,69,950/-. The writ petition was dismissed by the Single Bench vide order dated 11.3.1998. It was held by the Single Bench that in case the order dated 10.9.1993 was not complied, by the concerned authorities they would be liable for contempt of court and may be

dealt with in accordance with law in the contempt proceedings, but the mere fact that possession of the property was not restored, in view of the order passed on 10.9.1993 the same would not disentitle the authority in taking steps for acquisition of the property.

3. As against dismissal of the writ petition, appeal MAT No.1165/1998 had been preferred before the Division Bench. The Division Bench has allowed the same vide impugned judgment and order. The Government of West Bengal had conveyed the property by registered deed of conveyance on 21.12.2004 to Kolkata Metropolitan Development Authority for development. A Division Bench of the High Court has allowed the appeal. It was held that requisition under section 3(1) of the Act deemed to have been lapsed, as such the acquisition was illegal. Aggrieved thereby the appeal has been preferred by the Kolkata Metropolitan Development Authority.

4. It was urged on behalf of the appellants that the High Court did not quash the notification relating to requisition issued under section 3(1) of the Act, but only issued a direction that the

requisition should not continue for an indefinite period. Thus either the land was to be acquired or it should have been released from the requisition. The requisition continued and a notification under section 4(1)(a) of the Act had been issued. Award has been passed. Thus the property has vested in the State Government. The order of reacquisition did not lapse. The acquisition made was lawful. The ratio of Collector *of Kamrup & Ors.v. Kamakhya Ram Barooah etc.* AIR 1965 SC 1301 was not attracted. The only question for consideration was the effect of the order-dated 10.9.1993. The requisition came to an end on the issuance of notification under section 4(1) of the Act. There was no embargo created by orders of the court to exercise statutory power for the purpose of acquisition.

5. Shri Mukul Rohtagi, learned senior counsel appearing for the respondents urged that the property had continued for a period of more than 14 years in requisition. Thus the High Court has passed an order on 10.9.1993 that the requisition was illegal and impermissible. A direction was issued to release the property in case the property was not acquired within the time specified. As the State Government had not acted under the Act, it was a gross

dereliction of statutory duty not to release the property. The requisition came to an end and under the provisions of the Act property under requisition could have been acquired. It was a pre-condition that the property should be under requisition for the purpose of acquisition. Power of the High Court to issue mandamus is wide and untrammeled. As the State Government failed to act as per the mandamus it was not open to acquiring the property later on. The consequence of not acquiring the property within the time specified was the release of the property and to restore the possession. The LAO had no option but to restore the same within 6 months as stipulated in the order passed in 1993. The requisition came to an end on the lapse of 6 months period on 10.3.1994 and a further period of 6 months also expired on 10.9.1994 during which period property was to be released. Under no circumstances, requisition would continue after that period. In view of the decision in *Collector of Kamrup* (supra) the property did not remain under acquisition, as such notification for acquisition under section 4 (1) (a) was clearly ultra vires of the powers. It was also contended that the property was not used for the purpose it was required. As the

appellant had offered the property for commercial sale in the market by inviting public bids, the acquisition was wholly unjustified and deserves to be quashed. The notification under section 4 of the Act and notice under section 5 was issued in violation of orders of the court-dated 10.9.1993. The notification for acquisition was a nullity and void *ab-initio* being contemptuous to the order passed by the High Court. As observed in *Ravi S. Naik v. Union of India & Ors*. (1994) Supp 2 SCC 641 and *Manohar Lal (dead) by LRs. v. Ugrasen (dead) by LRs. & Ors*. (2010) 11 SCC 557 the acquisition was colourable and mala fide exercise of power. Even an erroneous decision operates as *res judicata* between the parties as court's order of 1993 was binding. Even if an order is void the parties cannot determine it. A party aggrieved by invalidity has to approach the court for invalidation that the order against is inoperative. Such a declaration permissible if the court lacks inherent jurisdiction hence the order of 10.9.1993 was binding. The power of judicial review has been rightly exercised by the Division Bench to undo the injustice and overreach of the State power.

6. The property had been requisitioned in the year 1979. The requisition continued for long. As the Single Bench passed an order on 10.9.1993, on the ground that the requisition should not continue for long. The requisition was not in fact quashed but a direction was issued either to acquire the property within 6 months and in case it was not so acquired within the time specified, Land Acquisition Collector was to initiate proceedings within next 6 months thereafter for release.

7. The requisition cannot last for long was laid down in *H.D. Vora v. State of Maharashtra & Ors*. (1984) 2 SCC 337 thus:

> **"6.** But it was contended on behalf of the appellant that even if the order of requisition was invalid as having been made for a purpose other than a public purpose, Respondent 3 was not entitled to challenge the same after a lapse of over 30 years and the writ petition should, therefore, have been dismissed by the High Court. Now if the only ground on which the order of requisition was challenged in the writ petition was that it was not made for a public purpose and was therefore void, perhaps it might have been possible to successfully repel this ground of challenge by raising an objection that the High Court should not have entertained the writ petition challenging the order of requisition after a lapse of over 30 years. But we find that there is also another ground of challenge urged on behalf of Respondent 3 and that is a very formidable ground to which there is no answer. The argument urged under this ground of challenge was that an order of requisition is by its very nature temporary in character and it cannot endure for an indefinite period of time and the order of requisition in the present case, therefore, ceased to be valid and effective after the expiration of a reasonable

period of time and that it could not, under any circumstances, continue for a period of about 30 years and hence it was liable to be quashed and set aside or in any event the State Government was bound to revoke the same and to derequisition the flat. This contention has, in our opinion, great force and must be sustained. There is a basic and fundamental distinction recognised by law between requisition and acquisition. The Constitution itself in Entry 42 of List III of the Seventh Schedule makes a distinction between acquisition and requisitioning of property. The original Article 31 clause (2) of the Constitution also recognised this distinction between compulsory acquisition and requisitioning of property. The two concepts, one of requisition and the other of acquisition are totally distinct and independent. The acquisition means the acquiring of the entire title of the expropriated owner whatever the nature and extent of that title may be. The entire bundle of rights which was vested in the original holder passes on acquisition to the acquirer leaving nothing to the former. Vide: Observations of Mukherjee, J., in *Chiranjit Lal case* AIR 1951 SC 41. The concept of acquisition has an air of permanence and finality in that there is transference of the title of the original holder to the acquiring authority. But the concept of requisition involves merely taking of “domain or control over property without acquiring rights of ownership” and must by its very nature be of temporary duration. If requisitioning of property could legitimately continue for an indefinite period of time, the distinction between requisition and acquisition would tend to become blurred, because in that event for all practical purposes the right to possession and enjoyment of the property which constitutes a major constituent element of the right of ownership would be vested indefinitely without any limitation of time in the requisitioning authority and it would be possible for the authority to substantially take over the property without acquiring it and paying full market value as compensation under the Land Acquisition Act, 1894. We do not think that the Government can under the guise of requisition continued for an indefinite period of time, in substance acquire the property, because that would be a fraud on the power conferred on the Government. If the Government wants to take over the property for an indefinite period of time, the Government must acquire the property but it cannot use the power of requisition for achieving that object. The power of requisition is exercisable by the Government only for a public purpose which is of a transitory character. If the public purpose for which the premises are required is of a perennial or permanent character from the very inception, no order can be passed requisitioning the premises and in such a case

> the order of requisition, if passed, would be a fraud upon the statute, for the Government would be requisitioning the premises when really speaking they want the premises for acquisition, the object of taking the premises being not transitory but permanent in character. Where the purpose for which the premises are required is of such a character that from the very inception it can never be served by requisitioning the premises but can be achieved only by acquiring the property which would be the case where the purpose is of a permanent character or likely to subsist for an indefinite period of time, the Government may acquire the premises but it certainly cannot requisition the premises and continue the requisitioning indefinitely. Here in the present case the order of requisition was made as far back as April 9, 1951, and even if it was made for housing a homeless person and the appellant at that time fell within the category of homeless person, it cannot be allowed to continue for such an inordinately long period as thirty years. We must therefore hold that the order of requisition even if it was valid when made, ceased to be valid and effective after the expiration of a reasonable period of time. It is not necessary for us to decide what period of time may be regarded as reasonable for the continuance of an order of requisition in a given case, because ultimately the answer to this question must depend on the facts and circumstances of each case but there can be no doubt that whatever be the public purpose for which an order of requisition is made, the period of time for which the order of requisition may be continued cannot be an unreasonably long period such as thirty years. The High Court was, therefore, in any view of the matter, right in holding that in the circumstances the order of requisition could not survive any longer and the State Government was bound to revoke the order of requisition and derequisition the flat and to take steps to evict the appellant from the flat and to hand over vacant possession of it to Respondent 3."

8. It was also held in *Jiwani Kumar Paraki v. First Land Acquisition Collector, Calcutta & Ors.* (1984) 4 SCC 612 that the requisition cannot continue for long and property should be acquired if necessary. This Court observed:

9“22. In view of the decision in the case of *H.D. Vora* (supra) in the light of the decision of this Court rendered by Bench of three Judges in *Collector of Akola* v. *Ramchandra* AIR 1968 SC 244 and bearing in mind the distinction between “requisition” and “acquisition” as also the provisions of West Bengal amended Section 49(1) (quoted above), the correct position in law would be that it will not be correct to say that in no case can an order of requisition for permanent purpose be made but in a situation where the purpose of requisitioning the property is of a permanent character and where the Government has also the power and the opportunity to acquire the property or a part thereof especially upon the fulfilment of the conditions of Section 49(1) of the Land Acquisition Act (as amended by the West Bengal Act) to the extent applicable, if the Government chooses not to exercise that power nor attempts to exercise that power to achieve its purpose, then that will be bad not because the Government would be acting without power of requisition but the Government might be acting in a bad faith. In other words, if there is power to acquire as also the power to requisition and the purpose is of permanent nature by having the property or a part thereof for the Government then in such case to keep the property under requisition permanently might be an abuse of the power and a colourable exercise of the power not because the Government lacks the power of requisition but because the Government does not use the other power of acquisition which will protect the rights and interests of the parties better.

24. It is true that the purpose indisputably in the instant case is a public purpose. It is also true that the only part of the building namely one room has been requisitioned for the showroom but the premises in question has remained under requisition for over 25 years and the purpose of having the premises in question is of a permanent and perennial nature. But that by itself without anything more would not enable the Court to draw the inference that the exercise of the power was bad initially, nor would the continuance of the requisition become mala fide or colourable by mere lapse of time. In order to draw such an inference, some more material ought to have been placed before the Court. In the circumstances after having heard counsel on either side fully, we feel that the following would be an appropriate order to be made in the instant case:

(1) The impugned requisition order is upheld but the 623 continuance of the requisition of the premises in question is permitted subject to the conditions mentioned hereinafter.

(2) The Government is directed to take steps to acquire premises in question by complying with the conditions mentioned and by following the procedure prescribed in Section 49(1) of the Land Acquisition Act, 1894 as substituted for the State of West Bengal by the West Bengal Act 32 of 1955 and if possible issue an appropriate order acquiring the same if Government wants the continued use of the premises. Such steps should be completed within a period of three years from today.

(3) If, however, there are insurmountable difficulties in acquiring the premises under Section 49(1), the Government will be at liberty to apply to this Court for appropriate directions.

(4) We also hope that the Government would take steps to acquire any alternative property or premises under Land Acquisition Act, 1894 in view of the fact that the purpose of the Government is more or less permanent and such steps should also be taken not beyond a period of three years as aforesaid.

(5) If the aforesaid conditions or directions are not complied with, the petitioner will also be at liberty to apply to this Court for appropriate directions in accordance with law.

(6) In the meantime, the parties are at liberty to make any appropriate application for the enhancement of rent or compensation in accordance with law, if they are so entitled to, and this will also not prejudice the parties from proceeding with any suit for damages etc. that may be pending."

9. In *Grahak Sanstha Manch & Ors. v. State of Maharashtra* (1994) 4 SCC 192 a Constitution Bench of this Court has observed

that the requisition cannot continue indefinitely. This Court observed:

> **"16.** We find ourselves in agreement with the view taken in the cases of *Collector of Akola* AIR 1968 SC 244 and *Jiwani Kumar Paraki* (1984) 4 SCC 612 that the purpose of a requisition order may be permanent. But that is not to say that an order of requisitioning can be continued indefinitely or for a period of time longer than that which is, in the facts and circumstances of the particular case, reasonable. We note and approve in this regard, as did this Court in *Jiwani Kumar Paraki case*, the observations of the Nagpur High Court in the case of *Mangilal Karwa* v. *State of M.P.* AIR 1955 Nag. 153 which have been reproduced above. That the concept of requisitioning is temporary is also indicated by the Law Commission in its Tenth Report and, as pointed out earlier, by the terms of the said Act itself, as it originally stood and as amended from time to time. There is no contradiction in concluding that while a requisition order can be issued for a permanent public purpose, it cannot be continued indefinitely. Requisitioning might have to be resorted to for a permanent public purpose, to give an example, to tide over the period of time required for making permanent premises available for it. The concepts of acquisition and requisition are altogether different as are the consequences that flow therefrom. A landlord cannot, in effect and substance, be deprived of his rights and title to property without being paid due compensation, and this is the effect of prolonged requisitioning. Requisitioning may be continued only for a reasonable period; what that period should be would depend upon the facts and circumstances of each case and it would ordinarily, be for the Government to decide."

10. On 10.9.1993 the High Court at Calcutta had passed the following directions in the previous writ application pertaining to requisition:

> "1. Since the order of requisition has been continuing the year 1979, the concerned Land Acquisition Collector is directed to acquire the property in question, if the authority so desires, within six months from the date of communication of this Order.
>
> 2. If the concerned authority does not acquire the property in question within the time specified hereinabove, the Land Acquisition Collector is directed to release the property in question from requisition and restore possession of the same to the writ petitioner within …… months thereafter."

The direction was two-fold; one to acquire property in 6 months and secondly on failure to acquire within 6 months to release the property within next 6 months. There was no automatic release contemplated in the order neither the notification under section 3 of the Requisition of Property issued way-back in the year 1979 had been quashed.

11. Sections 3 and 4 of the Act are relevant and they are extracted hereunder:

> **"3. Power to requisition. —**(1) If the State Government is of the opinion that it is necessary so to do for maintaining supplies and services essential to the life of the community or for increasing employment opportunities for the people by establishing commercial estates and industrial estates in different areas or for providing proper facilities for transport, communication, irrigation or drainage, or for the creation of better living conditions in rural or urban areas, not being an industrial or other area excluded by the State Government by a notification in this behalf, by the construction or reconstruction of dwelling places in such areas or for purposes connected therewith or incidental thereto, the State Government

may, by order in writing, requisition any land and may make such further orders as appear to it to be necessary or expedient in connection with the requisitioning:

Provided that no land used for the purpose of religious worship or used by an educational or charitable institution shall be requisitioned under this section.

(1A) A Collector of a district, an Additional District Magistrate or the First Land Acquisition Collector, Calcutta when authorized by the State Government in this behalf, may exercise within his jurisdiction the powers conferred by sub-section (1).

(2) An order under sub-section (1) shall be served in the prescribed manner on the owner of the land and where the order relates to land in occupation of an occupier, not being the owner of the land, also on such occupier.

(3) If any person fails to comply with an order made under sub-section (1), the Collector or any person authorized by him in writing in this behalf shall execute the order in such manner as he considers expedient and may, --

(a) if he is a Magistrate, enforce the delivery of possession of the land in respect of which the order has been made to himself, or

(b) if he is not a Magistrate, apply to a Magistrate or, in Calcutta as defined in clause (11) of section 5 of the Calcutta Municipal Act, 1951, to the Commissioner of Police, and such Magistrate or Commissioner, as the case may be, shall enforce the delivery of possession of such land to him".

4. Acquisition of land.—(1) Where any land has been requisitioned under section 3, the State Government may use or deal with such land for any of the purposes referred to in sub-section (1) of section 3 as may appear to it to be expedient.

(1a) The State Government may acquire any land requisitioned under section 3 by publishing a notice in the Official Gazette that such land is required for a public purpose referred to in sub-section (1) of section 3.

(2) Where a notice as aforesaid is published in the Official Gazette, the requisitioned land shall, on and from the beginning of the day on which the notice is so published, vest absolutely in the State Government free from all encumbrances and the period of requisition of such land shall end."

It is apparent from the aforesaid provisions that the property that is under requisition can only be acquired. Requisition is a *sine qua non* for a property as on the date when notification under section 4 is issued. Section 3 had been omitted w.e.f. 1.4.1994. However the property was requisitioned before the provision was omitted.

12. Section 6 deals with release from requisition. Section 6 is extracted hereunder :

> "**6. Release from requisition.—**(1) Where any land requisitioned under section 3 is not acquired and is to be released from requisition, the State Government may, after making such inquiry, if any, as it considers necessary, specify by order in writing the person who appears to it to be entitled to the possession of such land.
> (2) The delivery of possession of such land to the person specified in the order made under sub-section (1) shall be a full discharge of any liability of the State Government for any claim for compensation or other claim in respect of such land for any period after the date of delivery but shall not prejudice any right in respect of such land which any other person may be entitled by due process of law to enforce against the person to whom possession of the land is so delivered.
> (3) Where the person specified in the order made under sub-section (1) cannot be found or is not readily traceable or has no agent or other person empowered to accept delivery on his behalf, the State Government shall publish in the Official Gazette a notice declaring that such land is release from requisition and shall cause a copy thereof to be affixed on some conspicuous part of such land.

> (4) Where a notice referred to in sub-section (3) is published in the Official Gazette, the land specified in such notice shall cease to be subject to requisition on and from the date of such publication and shall be deemed to have been delivered to the person specified in the order made under sub-section (1); and the State Government shall not be liable for any compensation or other claims in respect of such land for any period after the said date."

It is apparent that section 6 requires an order to be passed by the State Government for release of the property from requisition. Government has to conduct an inquiry if any, considered necessary then the release order has to be passed and possession of the property has to be delivered under section 6. Section 6(2) also provides that even if possession has been delivered pursuant to a release order, the same shall not prejudice any right in respect of such land, if any other person may be entitled by due process of law to enforce against the person to whom possession of land was delivered.

13. The High Court in the instant case has not directed delivery of possession and possession had not been handed over. Thus by virtue of the provisions contained in section 6, until and unless release order is passed and delivery of possession pursuant thereto takes place, the requisition would continue.

14. In *The Collector of Kamrup & Ors. v. Kamakhya Ram Barooah & Ors.* (supra), this Court has laid down that the power to acquire the land under section 4 can be exercised only when land has been requisitioned under section 3 and not otherwise. This court in the said case has observed:

> "(4). The power to acquire land under s. 4 may, it is plain from a bare perusal of sub-s. (1), be exercised where the land has been requisitioned under s. 3 and not otherwise. In the present case, an order for acquisition of the land was made in the first instance and presumably because it was realized that the order was defective and irregular, it was sought to be rectified by passing an order on August 4, 1949, requisitioning the land with effect from February 7, 1949. By this expedient, an illegal order of acquisition could not be validated."

15. The question involved in the present case is whether in view of order passed by the court on 10.9.1993 property could be said to be under requisition under section 3 of the Act as on the date notification under section 4 had been issued.

16. In regard to efficacy of order dated 10.9.1993, the respondents have relied upon power to issue mandamus and the effect thereof. A reference has been made to the decision in *Comptroller and Auditor-General of India, Gian Prakash, New Delhi & Anr. v. K.S.*

Jagannathan & Anr. (1986) 2 SCC 679 and *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust & Ors. v. V.R. Rudani & Ors.* (1989) 2 SCC 691. In *Comptroller and Auditor-General of India* (supra) the court observed :

> **"20.** There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

In *Andi Mukta Sadguru* (supra), it was held:

> **"20.** The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature

> of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied."

There is no dispute with the proposition laid down in *Comptroller and Auditor-General of India* (supra) and *Andi Mukta Sadguru* (supra) that mandamus can be issued for doing the positive act or a legal duty cast upon an authority.

17. In *Mansukhlal Vithaldas Chauhan v. State of Gujarat* (1997) 7 SCC 622 it has been observed that mandamus is a discretionary remedy under Article 226 of the Constitution to compel for a public duty which may be administrative, ministerial or statutory in nature. Statutory duty may be either directory or mandatory. 'Shall' and 'must' sometimes be interpreted as 'may'. This Court has observed:

> **"22.** Mandamus which is a discretionary remedy under Article 226 of the Constitution is requested to be issued, inter alia, to compel performance of public duties which may be administrative, ministerial or statutory in nature. Statutory duty may be either directory or mandatory. Statutory duties, if they are intended to be mandatory in character, are indicated by the use of the words "shall" or "must". But this is not conclusive as "shall" and "must" have, sometimes, been interpreted as "may". What is determinative of the nature of duty, whether it is obligatory, mandatory or directory, is the scheme of the statute in which the "duty" has been set out. Even if

> the "duty" is not set out clearly and specifically in the statute, it may be implied as correlative to a "right".
>
> **23.** In the performance of this duty, if the authority in whom the discretion is vested under the statute, does not act independently and passes an order under the instructions and orders of another authority, the Court would intervene in the matter, quash the order and issue a mandamus to that authority to exercise its own discretion.
>
> **29.** It may be pointed out that this principle was also applied by Professor Wade to quasi-judicial bodies and their decisions. Relying upon the decision in *R.* v. *Justices of London* (1895) 1 QB 214. Professor Wade laid down the principle that where a public authority was given power to determine a matter, *mandamus would not lie to compel it to reach some particular decision."*

18. The High Court directed interim payment to be made in accordance with law laid down by it in which it held A.P. Act 3 of 1971 to be invalid. However on appeal, in *State of A.P. & Ors. v. Raja Shri V.S.K. Krishna Yachandra Bahadur Varuh Rajah of Venkatagiri & Ors.* (2002) 4 SCC 660 this Court upheld the constitutionality of the said Act and further held that interim payments could be made only from the date of determination by the Director under section 39(1). Though the mandamus that was issued by the High Court relying upon *Venkatagiri* case (supra) attained finality, for its enforcement, another writ petition was filed. The Supreme Court laid down in *Director of Settlements, A.P. & Ors.*

v. M.R. Apparao & Anr. (2002) 4 SCC 638, that no further mandamus could have been issued for release of payment in implementation of its earlier order. Once the decision on which it was based that is *Venkatagiri* case stood wiped off thus the mandamus became unenforceable. The Court further held that if the law which was declared invalid by the High Court is held constitutionally valid, effective and binding by the Supreme Court, then the mandamus forbearing the authorities from enforcing its provisions would become ineffective and the authorities cannot be compelled to perform a negative duty. The mandamus would not survive in favour of those parties against whom appeals were not filed. This Court examined the question whether while issuing a mandamus, the earlier judgment notwithstanding having been held to be rendered ineffective, can still be held to be operative. This Court in *Director of Settlements v. M.R. Apparao (supra)* observed :

> "In other words, the judgment of the Andhra Pradesh High Court in *Venkatagiri case* holding the Amendment Act to be constitutionally invalid, on being reversed by the Supreme Court on a conclusion that the said amendment is constitutionally valid, the said dictum would be valid throughout the country and for all persons, including the respondents, even though the judgment in their favour had not been assailed. It would in fact lead to an anomalous situation, if in the case of the respondents, the earlier conclusion that the Amendment Act is constitutionally invalid is allowed to

> operate notwithstanding the reversal of that conclusion in *Venkatagiri case* and only in *Venkatagiri case* or where the parties have never approached the Court to hold that the same is constitutionally valid. This being the position, notwithstanding the enunciation of the principle of res judicata and its applicability to the litigation between the parties at different stages, it is difficult for us to sustain the argument of Mr Rao that an indefeasible right has accrued to the respondents on the basis of the judgment in their favour which had not been challenged and that right could be enforced by issuance of a fresh mandamus. On the other hand, to have uniformity of the law and to have universal application of the law laid down by this Court in *Venkatagiri case* it would be reasonable to hold that the so-called direction in favour of the respondents became futile inasmuch as the direction was on the basis that the Amendment Act is constitutionally invalid, the moment the Supreme Court holds the Act to be constitutionally valid. We are, therefore, of the considered opinion that no indefeasible right on the respondents could be said to have accrued on account of the earlier judgment in their favour notwithstanding the reversal of the judgment of the High Court in *Venkatagiri case*."

19. This Court has laid down that the High Court erred in issuing mandamus in respect of a right which ceased to exist and was not available on the date on which mandamus had been issued afresh. In our opinion to enforce an order it should be effective on date mandamus is sought to be enforced. It can be interdicted by another order or by statutory intervention.

20. In *First Land Acquisition Collector & Ors. v. Nirodhi Prakash Gangoli & Anr.* (2002) 4 SCC 160 the premises in question had been requisitioned under the provisions of West Bengal Requisition and Control (Temporary Provision) Act, 1947 for accommodating

students of Calcutta National Medical College, Calcutta. The premises subsequently sought to be acquired by issuing notification under sections 4 and 6 of the Land Acquisition Act in 1982 and 1989 respectively. The High Court quashed the notifications. The premises stood derequisitioned in 1993. A fresh notification was issued under sections 4(1) and 17(4) of the Act in November 1994. Entire notification was questioned by filing a writ petition. In the said case Division Bench had issued a direction to hand over physical possession on 25.8.1994. This Court held that merely because possession had not been delivered pursuant to the direction of derequisition the acquisition would not become malafide. In case there existed need for acquisition it has to be judged independently. This Court has laid down:

> **"6.** It is indeed difficult for us to uphold the conclusion of the Division Bench that acquisition is mala fide on the mere fact that physical possession had not been delivered pursuant to the earlier directions of a learned Single Judge of the Calcutta High Court dated 25-8-1994. When the Court is called upon to examine the question as to whether the acquisition is mala fide or not, what is necessary to be inquired into and found out is, whether the purpose for which the acquisition is going to be made, is a real purpose or a camouflage. By no stretch of imagination, exercise of power for acquisition can be held to be mala fide, so long as the purpose of acquisition continues and as has already been stated, there existed emergency to acquire the premises in question. The premises which were under

occupation of the students of National Medical College, Calcutta, were obviously badly needed for the College and the appropriate authority having failed in their attempt earlier twice, the orders having been quashed by the High Court, had taken the third attempt of issuing notification under Sections 4(1) and 17(4) of the Act, such acquisition cannot be held to be mala fide and, therefore, the conclusion of the Division Bench in the impugned judgment that the acquisition is mala fide, must be set aside and we accordingly set aside the same.

7. The argument advanced on behalf of the respondents is that as the premises in question continued to be under possession of Calcutta Medical College, invocation of special powers under Section 17 was vitiated and a valuable right of the landowners to file objections under Section 5-A could not have been taken away. According to the counsel for the respondents, Section 5-A of the Act, merely gives an opportunity to the landowner to object to the acquisition within 30 days from the date of publication of the notification under Section 4, the power under Section 17 dispensing with inquiry under Section 5-A can, therefore, be invoked where there exists urgency to take immediate possession of the land, but where possession is with the acquiring authority, there cannot exist any urgency, and, therefore the exercise of that power is patently erroneous. In support of this contention, reliance was placed on the decision of this Court in *Balwant Narayan Bhagde* v. *M.D. Bhagwat* (1976) 1 SCC 700. We are unable to accept this contention since the same proceeds on a basic misconception about the possession of the premises. The premises in question had been requisitioned under the provisions of the Requisition Act and stood released from requisition by operation of Section 10-B of the said Act, since 1993. Even though the premises stood occupied by the students of the medical college, but such occupation was neither as owner nor was lawful in the eye of the law. To effectuate lawful possession and the purpose being undoubtedly a public purpose, the State Government had been attempting ever since December 1982 and each of its attempts had failed on account of the Court’s intervention. It is in this context, the legality of exercise of power under Section 17 of the notification dated 29-11-1994 is required to be adjudicated upon. In our considered opinion, having regard to the facts and circumstances narrated above, the exercise of power under Section 17 by the State Government, cannot be held to be illegal or mala fide and consequently, the impugned judgment of the Division Bench of the Calcutta High Court cannot be sustained. The learned Judges of the

> High Court have been totally swayed away by the fact of non-implementation of the directions of Batabyal, J., in his order dated 25-8-1994, but that by itself would not be a ground for annulling lawful exercise of power under the provisions of the Land Acquisition Act. We, therefore, set aside the impugned judgment of the Division Bench of the Calcutta High Court and hold that the acquisition in question is not vitiated on any ground. The acquisition proceeding, therefore, is held to be in accordance with law. The appeal is allowed. There will be no order as to costs."

21. It was also submitted on behalf of the respondents that the acquisition proceedings contrary to court's order were a nullity. In substance, the submission is that once the derequisition has been ordered to be made in specified time, having failed to do so, continuance of requisition was unlawful. Thus the acquisition of such property could not have been made in view of the principles laid down by this Court in *Ravi S. Naik v. Union of India & Ors*. (1994) Supp 2 SCC 641 and *Manohar Lal v. Ugrasen* (2010) 11 SCC 557. The relevant portion of *Ravi S. Naik* (supra) is extracted hereunder :

> **"40.** We will first examine whether Bandekar and Chopdekar could be excluded from the group on the basis of order dated December 13, 1990, holding that they stood disqualified as members of the Goa Legislative Assembly. The said two members had filed Writ Petition No. 321 of 1990 in the Bombay High Court wherein they challenged the validity of the said order of disqualification and by order dated December 14, 1990, passed in the said writ petition the High Court had stayed the operation of the said order of disqualification dated

> December 13, 1990, passed by the Speaker. The effect of the stay of the operation of the order of disqualification dated December 13, 1990 was that with effect from December 14, 1990, the declaration that Bandekar and Chopdekar were disqualified from being members of Goa Legislative Assembly under order dated December 13, 1991, was not operative and on December 24, 1990, the date of the alleged split, it could not be said that they were not members of Goa Legislative Assembly. One of the reasons given by the Speaker for not giving effect to the stay order passed by the High Court on December 14, 1990, was that the said order came after the order of disqualification was issued by him. We are unable to appreciate this reason. Since the said order was passed in a writ petition challenging the validity of the order dated December 13, 1990, passed by the Speaker it, obviously, had to come after the order of disqualification was issued by the Speaker. The other reason given by the Speaker was that Parliament had held that the Speaker's order cannot be a subject matter of court proceedings and his decision is final as far as Tenth Schedule of the Constitution is concerned. The said reason is also unsustainable in law. As to whether the order of the Speaker could be a subject matter of court proceedings and whether his decision was final were questions involving the interpretation of the provisions contained in Tenth Schedule to the Constitution. On the date of the passing of the stay order dated December 14, 1990, the said questions were pending consideration before this Court. In the absence of an authoritative pronouncement by this Court, the stay order passed by the High Court could not be ignored by the Speaker on the view that his order could not be a subject matter of court proceedings and his decision was final. It is settled law that an order, even though interim in nature, is binding till it is set aside by a competent court and it cannot be ignored on the ground that the court which passed the order had no jurisdiction to pass the same. Moreover, the stay order was passed by the High Court which is a superior Court of Record and "in the case of a superior Court of Record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a court of limited jurisdiction, the Superior Court is entitled to determine for itself questions about its own jurisdiction."

This Court has observed that interim order is also binding till it is set aside. In *Manohar Lal* (supra) this Court observed:

24. In *Mulraj* v. *Murti Raghunathji Maharaj* AIR 1967 SC 1386, this Court considered the effect of action taken subsequent to passing of an interim order in its disobedience and held that any action taken in disobedience of the order passed by the Court would be illegal. *Subsequent action would be a nullity*.

25. In *Surjit Singh* v. *Harbans Singh* AIR 1966 SC 135, this Court while dealing with the similar issue held as under (SCC p. 52, para 4)

> "*4.* … In defiance of the restraint order, the alienation/assignment was made. If we were to let it go as such, it would defeat the ends of justice and the prevalent public policy. When the court intends a particular state of affairs to exist while it is in seisin of a lis, that state of affairs is not only required to be maintained, but it is presumed to exist till the court orders otherwise. The court, in these circumstances has the duty, as also the right, to treat the alienation/assignment as having not taken place at all for its purposes."

26. In *All Bengal Excise Licensees' Assn.* v. *Raghabendra Singh* AIR 2007 SC 1386 this Court held as under: (SCC p. 387, para 28)

> "*28.* … a party to the litigation cannot be allowed to take an unfair advantage by committing breach of an interim order and escape the consequences thereof. … the wrong perpetrated by the respondent contemnors in utter disregard of the order of the High Court should not be permitted to hold good."

27. In *DDA* v. *Skipper Construction Co. (P) Ltd.* AIR 1966 SC 2005 this Court after making reference to many of the earlier judgments held: (SCC p. 636, para 18)

> "*18.* … '… on principle that those who defy a prohibition ought not to be able to claim that the fruits of their defiance are good, and not tainted by the illegality that produced them.'"

28. In *Gurunath Manohar Pavaskar* v. *Nagesh Siddappa Navalgund* AIR 2008 SC 901 this Court while dealing with the similar issues held that even a court in exercise of its inherent jurisdiction under Section 151 of the Code of Civil Procedure, 1908, in the event of coming to the conclusion that a breach of an order of restraint had

> taken place, may bring back the parties to the same position as if the order of injunction has not been violated.
>
> **29.** In view of the above, it is evident that any order passed by any authority in spite of the knowledge of the interim order of the court is of no consequence as it remains a nullity.

22. In the light of aforesaid principles, in the instant case, we have to consider the nature of mandamus that has been issued on 10.9.1993. Firstly the court had not quashed the order of requisition. Apart from that, the court has not ordered that on lapse of 6 months period granted for acquisition and further period of 6 months property shall stand derequisitioned. The direction was issued to the L.A.C. to release the property in question from requisition. It was not an automatic consequence of the command issued. Thus if the property had not been released under section 6 of the Act obviously the requisition continued and statutory power of acquisition could have been exercised.

23. In *General Manager, Department of Telecommunications, Thiruvananthapuram v. Jacob s/o Kochuvarkey Kalliath (dead) by LRs. & Ors.* (2003) 9 SCC 662 this Court considered the question of issuance of direction by the High Court to complete acquisition

proceedings and pass an award within a specified period with a view to avoiding further delay. This Court held that it would not disable the authorities to exercise power under section 11-A where under a longer period was available for passing an award. This Court also held that direction or order couldn't be read to stultify any authority from exercising its powers under the statute or deprives a statutory provision of its enforceability. This Court also considered the question of limitations of mandamus and also issue of liability under the Contempt of Courts Act, and held that there was no violation of either in exercise of statutory powers despite court order. This court observed:

> **"7.** As for the plea raised on behalf of the respondents that since the Court directed the passing of the award by 3-9-1992 which time was subsequently extended up to 3-12-1992, irrespective of the provisions contained in the Act or for that matter even if what was said by the Court was right or wrong, the order passed by the Court was very much binding inter partes and the appellant could not have legitimately passed an award at any time beyond 3-12-1992. Strong reliance has been placed upon the decision reported in *N. Narasimhaiah* (1996) 3 SCC 88. This was a case wherein the exercise of power under Section 17(4) dispensing with enquiry under Section 5-A was quashed by the High Court and liberty was given to the State to proceed further in accordance with law i.e. to conduct the enquiry under Section 5-A and if the Government forms an opinion that the land is required for a public purpose, issue a fresh declaration under Section 6. The question, which loomed large for consideration, was as to whether the limitation prescribed under clause (*ii*) of the first proviso to sub-section (1) would still remain

operative and be capable of being complied with. This Court observed that running of the limitation should be counted from the date of the order of the court received by the Land Acquisition Officer and declaration is to be published within one year from that date. This was for the reason that the Court having quashed the earlier declaration under Section 6 when directed an enquiry under Section 5-A to be conducted and to proceed afresh from that stage, the limitation prescribed for issuing Section 6 declaration would apply to the publication of declaration under Section 6(1) afresh and to be complied with from the date of receipt of a copy of the order of the Court. This decision is of no assistance whatsoever to the respondents in the present case. Notwithstanding the statutory period fixed, further time came to be granted due to intervention of court proceedings in which a direction came to be issued to proceed in the matter afresh, as directed by the Court, apparently applying the well-settled legal maxim — *actus curiae neminemgravabit*: an act of the court shall prejudice no man. In substance what was done therein was to necessitate afresh calculation of the statutory period from the date of receipt of the copy of the order of the court. Granting of further time than the one stipulated in law in a given case as a sequel to the decision to carry out the dictates of the court afresh is not the same as curtailing the statutory period of time to stultify an action otherwise permissible or allowed in law. Consequently, no inspiration can be drawn by the respondents in this case on the analogy of the said decision.

8. Reliance placed on the decision reported in *M.M. Krishnamurthy Chetty* (1998) 9 SCC 138 is equally inappropriate and ill-conceived. That was a case wherein a learned Judge of the High Court, while setting aside the order passed by the statutory authorities under the Tamil Nadu Land Reforms (Fixation of Ceiling of Land) Act, 1961, remanded the case for fresh consideration specifically in the light of an earlier judgment of the High Court in the case of *Naganatha Ayyar* v. *Authorised Officer* 84 MLW 69. While the remand proceedings were pending before the authorised officer, this Court reversed the aforesaid judgment in *Authorised Officer* v. *S. Naganatha Ayyar* (1979) 3 SCC 466 and the authorised officer decided the ceiling limit in the remit proceedings in terms of the decision of this Court and not as per the directions of the High Court to determine the same in the light of the earlier High Court judgment. It was held in that case that the order of the High Court directing the authorised officer to examine the dispute in the light of the earlier High Court decision reported in *Naganatha (supra)*

> having become final in the absence of any challenge thereto despite the reversal of the earlier High Court judgment by this Court, this Court observed that even orders which may not be strictly legal become final and are binding on the parties if they are not challenged before the superior courts. This Court, while rendering the said decision, was concerned with a direction of the High Court to do a particular thing in a particular manner and unless the binding judgment between parties was set at naught to enable the authority to do it in any other way, it had to be done in a particular manner so directed by the Court or not at all. So far as the case on hand is concerned, since the Court in the earlier proceedings had intervened at the instance of the respondents the Court was directing the authorities concerned to complete the process within a particular time to avoid further delay and ensure expeditious conclusion of the proceedings. There is nothing to indicate in the order of the High Court stipulating or extending the time for passing the award, that beyond the time so permitted, it cannot be done at all and the authorities are disabled once and for all even to proceed in the matter in accordance with law, if it is so permissible for the authorities under the law governing the matter in issue. The Court cannot be imputed with such an intention to stifle the authorities from exercising powers vested with them under statute or to have rendered an otherwise enforceable statutory provision, a mere dead letter. Neither from the nature and purport of the earlier orders passed nor from their contents, is there any scope for inferring the imposition of a total embargo upon the competent authorities, to exercise the statutory powers indisputably vested with and available to such authorities under the statute, at the time of such exercise.

24. In the instant case as the High Court has not quashed the notification under section 3 and till derequisition was actually made, once statutory power had been exercised under section 4 which could be exercised when requisition continues and that as a matter of fact, continued as the court had not culled out the consequence, there was no automatic consequence of the de-

requisition on lapse of specified time. Proceedings under section 6 were required to be undertaken. No order of release was passed. Requisition continued until the date of acquisition notification and there was no time limit for initiating acquisition under the Act. The statutory provision would not be stultified by the command so issued by the High Court in view of the decision of this Court in *Jacob* (supra). Though, Single Judge has opined that considering the order, it would be a case of violation of the order to be dealt with under the Contempt of Courts Act. However, in our opinion, when statutory provision had been invoked for acquisition, there is no question of applicability of contempt of court also as laid down in *Jacob* (supra).

25. Reliance has been placed on *Patasi Devi v. State of Haryana* (2012) 9 SCC 503 that it was a colourable exercise of power. In the said case this Court found that the acquisition was made in order to oblige the colonizer that was not for a public purpose. The facts are different in the instant case. The property had been acquired for the purpose of systematic development of Calcutta and the same has been handed over to Kolkata Metropolitan Development

Corporation for the said purpose. Thus it could not be said that there was colourable exercise of power in the instant case.

26. It was also submitted on behalf of respondents that even if the order is void, it is required to be so declared by the competent forum. It is not permissible to ignore it. For the purpose, reliance has been placed on *Krishnadevi Malchand Kamathia & Ors. v. Bombay Environmental Action Group & Ors*. (2011) 3 SCC 363:

> **"16.** It is a settled legal proposition that even if an order is void, it requires to be so declared by a competent forum and it is not permissible for any person to ignore the same merely because in his opinion the order is void. In *State of Kerala* v. *M.K. Kunhikannan Nambiar Manjeri Manikoth Naduvi* AIR 1996 SC 906, *Tayabbhai M. Bagasarwalla* v. *Hind Rubber Industries (P) Ltd.* AIR 1997 SC 1240, *M. Meenakshi* v. *Metadin Agarwal* (2006) 7 SCC 470 and *Sneh Gupta* v. *Devi Sarup* (2009) 6 SCC 194, this Court held that whether an order is valid or void, cannot be determined by the parties. For setting aside such an order, even if void, the party has to approach the appropriate forum.
>
> **17.** In *State of Punjab* v. *Gurdev Singh* AIR 1991 SC 2219, this Court held that a party aggrieved by the invalidity of an order has to approach the court for relief of declaration that the order against him is inoperative and therefore, not binding upon him. While deciding the said case, this Court placed reliance upon the judgment in *Smith* v. *East Elloe RDC* 1956 AC 736, wherein Lord Radcliffe observed: (AC pp. 769-70)
>
> > "… An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity [on] its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or

> otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."
>
> **18.** In *Sultan Sadik* v. *Sanjay Raj Subba AIR 2004 SC 1377*, this Court took a similar view observing that once an order is declared non-est by the court only then the judgment of nullity would operate *ergaomnes* i.e. for and against everyone concerned. Such a declaration is permissible if the court comes to the conclusion that the author of the order lacks inherent jurisdiction/competence and therefore, it comes to the conclusion that the order suffers from patent and latent invalidity.
>
> **19.** Thus, from the above, it emerges that even if the order/notification is void/voidable, the party aggrieved by the same cannot decide that the said order/notification is not binding upon it. It has to approach the court for seeking such declaration. The order may be hypothetically a nullity and even if its invalidity is challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds including the standing of the petitioner or on the ground of delay or on the doctrine of waiver or any other legal reason. The order may be void for one purpose or for one person, it may not be so for another purpose or another person."

In the instant case ratio of the aforesaid dictum is not applicable and it is not the case that the order was void but statutory power has been exercised and considering the nature of command that has been issued in the previous order dated 10.9.1993, the decision in *Krishnadevi* (supra) is not attracted to the case.

27. It was also submitted on behalf of the respondents that an erroneous decision operates as res judicata. For this purpose, reliance has been placed on *Mohanlal Goenka v. Benoy Krishna Mukherjee & Ors*. AIR 1953 SC 65. This Court observed:

> (23)"There is ample authority for the proposition that even an erroneous decision on a question of law operates as res judicata between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as res judicata. A decision in the previous execution case between the parties that the matter was not within the competence of the executing Court even though erroneous is binding on the parties; see *Abhoy Kanta Gohain v. Gopinath Deb Goswami and Others* AIR (30) 1943 Cal 460."

There is no question of applicability of *res judicata* in the instant case. As statutory power has been exercised the statutory action is not stifled by the order of the court. It was stated that the land was proposed to be sold but the appellants had made it clear that they are not going to sell the property. This Court had held in *Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. Pvt. Ltd. & Ors*. (1996) 11 SCC 501 where the land has been acquired for public purpose may be used for another public purpose; diversion to private purpose is only interdicted.

28. In view of the aforesaid discussion, we find that the Division Bench of the High Court has erred in law in quashing the acquisition. We set aside the order passed by the Division Bench of the High Court and restore that of the Single Bench. The appeal is allowed. Parties to bear their costs.

.....J.
(ARUN MISHRA)

.....J.
(MOHAN M. SHANTANAGOUDAR)

NEW DELHI;
OCTOBER 24, 2017.

ITEM NO.1501 COURT NO.10 SECTION XVI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s).461/2009

KOLKATA METROPOLITAN DEVELOPMENT AUTHORITY Appellant(s)

VERSUS

PRADIP KUMAR GHOSH & ORS. Respondent(s)

Date : 24-10-2017 This appeal was called on for pronouncement of judgment today.

For Appellant(s) Ms. Anindita Gupta,Adv.
Ms. Kumud L. Das,Adv.
Mr. Rajesh Srivastava,AOR

For Respondent(s)
State Mr. Soumitra G. Chaudhuri,Adv.
Mr. Chanchal Kumar Ganguli,AOR

Ms. Asha Gopalan Nair,AOR

UPON hearing the counsel the Court made the following
O R D E R

Hon'ble Mr. Justice Arun Mishra pronounced the Reportable judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Mohan M. Shantanagoudar.

The appeal is allowed in terms of the signed Reportable judgment. Parties to bear their own costs.

Pending application, if any, stands disposed of.

(Sarita Purohit)
Court Master

(Tapan Kumar Chakraborty)
Branch Officer

(Signed Reportable judgment is placed on the file)