2024 INSC 435

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6466 OF 2024
ARISING OUT OF SLP (C) NO. 4504 OF 2021

KOLKATA MUNICIPAL CORPORATION & ANR. …APPELLANTS

VERSUS

BIMAL KUMAR SHAH & ORS. …RESPONDENTS

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J U D G M E N T

PAMIDIGHANTAM SRI NARASIMHA, J.

1. Leave granted.

Introduction: The Kolkata Municipal Corporation claims to have acquired the property of respondent no. 1 in exercise of powers under Section 352 of the Kolkata Municipal Corporation Act, 1980. A single Judge and the Division Bench of the High Court have concurrently held that there is no such power of compulsory acquisition of immovable property under Section 352. While upholding the decision of the High Court, we have given our additional reasons by interpreting the *text* and the *context* in which Section 352 is placed in the Act. Rejecting the alternative argument of the appellant-Corporation that there is also a provision for compensation under Section 363 of the Act when land is acquired under Section 352, we have examined the constitutional position of acquisition of immovable property whereunder the mere presence of power to acquire coupled with a provision for payment of fair compensation by itself is not sufficient for a valid acquisition. Interpreting "*authority of law*" in Article 300A of the Constitution, we have held that a minimum content of a constitutional right to property comprises of seven sub-rights or

procedures such as the right to notice, hearing, reasons for the decision, to acquire only for public purpose, fair compensation, efficient conduct of the procedure within timelines and finally the conclusion. These sub-rights have synchronously formed part of our laws and have attained judicial recognition. Therefore, as Section 352 does not provide for these sub-rights or procedures, it can never be a valid power of acquisition. Before we deal with the submissions and analyse the provisions, we will first narrate the necessary facts.

2. ***Facts:*** The property in question, Premises No. 106C, situated at Narikeldanga North Road, Kolkata – 700011[1], belongs to Mr. Birinchi Bihari Shah[2] having succeeded it through a deed of settlement executed by his father. As Birinchi Shah was minor at the time when his father passed away, his elder brother managed and administered the Property and, in that process, he also let out the premises admeasuring 2 *bighas* 18 *kathas* 6 *chitaks* and 40 square feet in favour of one M/s Arora Film Corporation. Upon attaining majority, the Property was mutated in the name of Birinchi Shah in the assessment book of the appellant-Corporation. It is affirmatively stated that

[1] Hereinafter, referred to as the "Property".
[2] Hereinafter, referred to as "Birinchi Shah".

all municipal dues including taxes with respect to the Property were paid regularly. It is also stated that the appellant-Corporation acknowledged the same and by its letter dated 07.04.2000 admitting that there are no outstanding dues with respect to property tax.

3. In the year 2009, when an attempt was made by the appellant-Corporation to forcefully enter and occupy the Property, Birinchi Shah filed a writ petition being W.P. No. 126 of 2009 before the High Court seeking a restraint order against the appellant-Corporation.

4. As there was no real contest about the title in the Property and the appellant-Corporation having not filed any affidavit-in-opposition, the High Court disposed of the writ petition by an order dated 17.09.2009 directing that the appellant-Corporation must hold an enquiry about the encroachments. The High Court further directed the appellant-Corporation not to make any construction over the Property.

5. In July 2010, Birinchi Shah received information that the appellant-Corporation had deleted his name from the category of owner and had inserted its own name in the official records. Aggrieved, he approached the High Court by filing a writ petition

bearing W.P. No. 981 of 2010, not only for correction of the entries but also to restrain the appellant-Corporation from interfering with his peaceful possession over the Property. What happened in this writ petition is of seminal importance. The learned single Judge, by an order dated 08.01.2015, recorded the statement of the appellant-Corporation that they are unable to controvert the averments made in the writ petition with respect to title and ownership of the Property. The writ petition was disposed of restraining the appellant-Corporation from interfering with the possession of Birinchi Shah and also injuncted them from giving effect to the wrongful recording of its name in the official records. The appellant-Corporation was also directed to remove its men and material from the Property within two weeks from the date of the said order. The specific finding of the High Court that the appellant-Corporation could not establish its right and the title in the Property is significant.

6. Dissatisfied, the appellant-Corporation filed a writ appeal bearing A.P.O. No. 51 of 2015 against the order of the single Judge and contended that their affidavit-in-opposition could not be filed before the Single Judge as the records were misplaced. It is more or less an admitted fact that a plea of

acquisition was taken for the first time before the Division Bench, and this seems to be the reason for the Division Bench to remand the matter back to the single Judge after imposing a cost of Rs. 50,000/- on the appellant-Corporation. After remand, the appellant-Corporation filed an affidavit-in-opposition before the single Judge claiming that the land was acquired. In view of new developments, Birinchi Shah sought permission to withdraw the pending writ petition with the liberty to file a fresh writ petition. The High Court permitted this by an order dated 11.08.2016.

7. Accordingly, Writ Petition No. 930 of 2016 was filed by the respondent no. 1, the executor to the estate of Birinchi Shah, *inter alia*, seeking an order quashing the alleged acquisition as illegal and to restore their name as owners in the official records.

8. The learned single Judge of the High Court, allowing the writ petition by order dated 14.09.2017, formulated two questions. The first question relates to the maintainability of the writ petition, which was answered in the affirmative. As there is no contest to this issue, we will not deal with it. The second issue relates to the legality and validity of acquisition of

the Property in exercise of power under Section 352 of the Kolkata Municipal Corporation Act, 1980[3]. Answering the second question, the learned single Judge held that the appellant-Corporation purported to acquire the Property under Section 352(a) of the Act when there is no power of compulsory acquisition therein. The learned single Judge therefore quashed and set-aside the alleged action of acquisition.

9. The appellant-Corporation as well as the respondent no. 1 assailed the order of learned single Judge in writ appeals bearing APO No. 523 of 2017 and APO No. 210 of 2018, respectively.

10. The Division Bench of the High Court, by the judgment impugned herein, affirmed the order of the Single Judge and accordingly, disposed of the appeals with a direction that the appellant-Corporation may initiate acquisition proceedings for the Property under Section 536 or 537 of the Act, within five months, or in the alternative, restore the name of the last recorded owner as the owner of the Property.

[3] Hereinafter, referred to as the "Act".

11. It is against this judgment and order of the Division Bench of the High Court, that the appellant-Corporation is in appeal before us.

12. ***Submission of Counsels*:** Mr. Jaideep Gupta, learned senior counsel, representing the appellant-Corporation, has submitted that the appellant-Corporation has the requisite statutory *power* to acquire a property under Section 352 of the Act for the purposes of constructing a park, as is the case here. He has referred to Section 363 of the Act provisioning *compensation* for acquisitions made under Section 352 of the Act and submitted that acquisition under this chapter is therefore complete and stands on its own footing. He contended that the single and division benches of the High Court erred in concluding that Section 537 of the Act is the only provision for acquisition. Relying on *State of Kerala* v. *T.M. Peter*[4], he would submit that for differential schemes and purposes of acquisition, different compensation structures will not violate Article 14 of the Constitution. On the same point, he also relied on the decisions of this Court in *Girnar Traders (3)* v. *State of*

[4] (1980) 3 SCC 554.

Maharashtra[5], and *Bankatlal* v. *Special Land Acquisition Officer*[6].

13. Mr. Mukul Rohatgi and Mr. Huzefa Ahmadi, learned senior counsels, appearing for the respondents, while supporting the judgment of the High Court, impugned herein, submitted that the *power* of acquisition is only in Section 537 of the Act and that invocation of Section 352 read with Section 363 is illegal and violative of Article 300A of the Constitution. In support of their submissions, they relied on the judgment of this Court in *Nagpur Improvement Trust* v. *Vithal Rao*[7].

14. ***Scheme of the Act:*** The Kolkata Municipal Corporation Act, 1980 extends to 636 Sections, followed by 9 Schedules. It has IX Parts, of which we are concerned only with Part VI of which Chapter XXI – relating to *Streets and Public Places* and Part VIII of which Chapter XXXIII – relating to *Acquisition and Disposal of Property*. As the appellant-Corporation invoked Section 352 of the Act to acquire the Property for the purpose of opening a park and ward office, we need to examine the provision. Section 352 of the Act provides as under:

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[5] (2011) 3 SCC 1.
[6] (2014) 15 SCC 116.
[7] (1973) 1 SCC 500.

> *"**Section 352:- Power to acquire lands and buildings for public streets and for public parking places**:– The Municipal Commissioner may, subject to the other provisions of this Act –*
> *(a) acquire any land required for the purpose of opening, widening, extending or otherwise improving any public street, square, park or garden or of making a new one, together with any building standing upon such land;*
> *(b) acquire, in relation to any land or building as aforesaid, such land with building thereon outside the regular line or the projected regular line of such public street;*
> *(c) acquire any land for the purpose of laying out or making a public parking place."*

15. The appellant-Corporation has also relied on Section 363 of the Act relating to payment of compensation. The said provision is as under:

> "**Section 363-*Compensation to be paid***:– *(1) Compensation shall be paid by the Corporation to the owner of any building or land acquired for a public street, square, park or garden under the provisions of this Chapter:*
>
> *Provided that any increase or decrease in the value of the remainder of the property, of which building or the land so acquired formed part, likely to accrue from the setting back to the regular line of a public street, shall be taken into consideration in determining the amount of such compensation.*
> *(2) If any additional land, which will be included in the premises of any person permitted or required by an order under sub-section (2) of section 360 to set forward a building to the regular line of a public street, belongs to the Corporation, such order shall be a sufficient conveyance to the owner of such land; and the price to be paid to the Corporation by the owner for such additional land and the other terms*

and conditions of the conveyance shall be set forth in such order.

(3) The Corporation shall pay compensation in respect of land or building acquired under this Chapter at the following scale:

(i)….

(ii)….”

16. A close examination of the text of Section 352 of the Act coupled with the context with respect to the placement of the section in the Act, clarifies the purpose and object of the provision. The text of Section 352 of the Act provides that the Municipal Commissioner may acquire any land required for the purpose of opening, widening, extending, etc. of a street, square, park, etc. The purpose of this provision is to declare that if the Municipal Commissioner is of the view that any land is required for the purpose of opening a street, park, etc., such a land may be acquired. Once the Municipal Commissioner takes the decision to acquire a piece of land, what would then be the process of acquisition is not provided in Section 352. It is provided in Section 535 occurring in Chapter XXXIII of Part VIII of the Act which relates to ‘*Acquisition of Property*’.

17. Before we deal with the Section 535, it is sufficient to conclude that Section 352 merely contemplates the power and

duty of the Municipal Commissioner to identify the land intended for opening of a street, park etc., and once that decision is taken, the Municipal Commissioner would take steps to acquire such a property, for a public purpose.

18. The context in which Section 352 is located in Chapter XXI of Part VI of the Act relating to '*streets for public place*', also makes the position clear that this provision relates to vesting of public street, squares, parks and gardens in the appellant-Corporation but does not provide for the power of acquisition. In the following paragraph, we have explained how the text and the context of the expression, '*The Municipal Commissioner may acquire*' in Section 352 is not at all the power of acquisition.

19. Upon arriving at a decision to acquire any land for the purpose of opening a street, square, park, etc., under Section 352, the Municipal Commissioner will then apply to the Government under Section 537 of the Act to initiate the process of acquisition. Section 537 is located in Chapter XXXIII Part VIII of the Act relating to '*Acquisition of Property*'. This Chapter commences with Section 535 which specifically provides that the appellant-Corporation shall have the power to acquire and hold immovable property. It is followed by the power to acquire properties through an agreement

under Section 536 of the Act or in the alternative, through compulsory acquisition of immovable property as provided in Section 537 of the Act.

20. The position is thus, clear. Upon application of the Municipal Commissioner under Section 537 for the acquisition of land for opening of a street, square, park etc., the Government may order proceedings to be taken for acquiring land on behalf of the appellant-Corporation as if the land is needed for a public purpose within the meaning of the Land Acquisition Act, 1894.

21. Sections 535, 536 and 537 of the Act are extracted hereinbelow for ready reference:

> "***Section 535. Acquisition of property***. – *The Corporation shall, for the purposes of this Act, have power to acquire and hold movable and immovable property or any interest therein, whether within or outside the limits of Kolkata.*
>
> ***Section 536. Acquisition of immovable property by agreement***.—
> *(1) Whenever it is provided in this Act that the Municipal Commissioner may acquire, or whenever it is necessary or expedient for any purpose of this Act that the Municipal Commissioner shall acquire, any immovable property, such property may be acquired by the Municipal Commissioner on behalf of the Corporation by agreement on such terms and at such rates or prices or at rates or prices not exceeding such maxima as may be approved by the Mayor-in-Council either generally for any class of cases or specially in any particular case.*

(2) Whenever, under any provision of this Act, the Municipal Commissioner is authorised to agree to pay the whole or any portion of the expenses of acquiring any immovable property, he shall do so on such terms at such rates or prices or at rates or prices not exceeding such maxima as may be approved by the Mayor-in-Council either generally or in particular as aforesaid.
(3) The Municipal Commissioner may on behalf of the Corporation acquire by agreement any easement affecting any immovable property vested in the Corporation and the provisions of sub-sections (1) and (2) shall apply to such acquisition.

Section 537. Procedure when immovable property cannot be acquired by agreement. *– (1) Whenever the Municipal Commissioner is unable under section 536 to acquire by agreement any immovable property or any easement affecting any immovable property vested in the Corporation or whenever any immovable property or any easement affecting any immovable property vested in the Corporation is required for the purpose of this Act, the State Government may, in its discretion, upon application of the Municipal Commissioner, made with the approval of the Mayor-in-Council and subject to other provisions of this Act, order proceedings to be taken for acquiring the same on behalf of the Corporation, as if such property or easement were land needed for public purpose within the meaning of the Land Acquisition Act, 1894 (I of 1894)*

(2).....

(3) For the purpose of acquisition of immovable property under this section, the Land Acquisition Act, 1894, shall be subject to the amendment that the market value of any land or building to be acquired shall be deemed, for the purpose of sub-section (1) of section 23 of the Act, to be the market-value determined according to the disposition of

such immovable property at the date of declaration under sub-section (1) of section 4 thereof in respect of such immovable property.

(4) The amount of compensation awarded and all other charges incurred in the acquisition of any such property shall, subject to all other provisions of this Act, be forthwith paid by the Municipal Commissioner and thereupon such property shall vest in the Corporation."

22. The scheme of the Act makes it clear that Section 352 empowers the Municipal Commissioner to identify the land required for the purpose of opening of public street, square, park, etc. and under Section 537, the Municipal Commissioner has to apply to the Government to compulsorily acquire the land. Upon such an application, the Government may, in its own discretion, order proceedings to be taken for acquiring the land. Section 352 is therefore, not the power of acquisition. We, therefore, reject the submission on behalf of the appellant-Corporation that Section 352 enables the Municipal Commissioner to acquire land.

23. We will now deal with the other submission of Mr. Jaideep Gupta that there is also a provision for compensation under Section 363 where land is acquired under Section 352. In so far as Section 363 relating to payment of compensation is concerned, the High Court has clarified that this provision relates to payment of

compensation upon an agreement and not for compulsory acquisition. We are in agreement with this finding of the High Court.

24. ***The Right to property: A net of intersecting rights:*** There is yet another aspect of the matter. Under our constitutional scheme, compliance with a fair procedure of law before depriving any person of his immovable property is well entrenched. We are examining this issue in the context of Section 352 of the Act which is bereft of any procedure whatsoever before compulsorily acquiring private property. Again, assuming that Section 363 of the Act provides for compensation, compulsory acquisition will still be unconstitutional if proper procedure is not established or followed before depriving a person of their right to property. We find it compelling to clarify that a rather undue emphasis is laid on provisions of compensation to justify the power of compulsory acquisition, as if compensation by itself is the complete procedure for a valid acquisition.

25. While it is true that after the 44th Constitutional Amendment[8], the right to property drifted from Part III to Part XII of the Constitution, there continues to be a potent safety net

[8] Constitution (Forty-Fourth Amendment) Act, 1978.

against arbitrary acquisitions, hasty decision-making and unfair redressal mechanisms. Despite its spatial placement, Article 300A[9] which declares that "*no person shall be deprived of his property save by authority of law*" has been characterised both as a constitutional and also a human right[10]. To assume that constitutional protection gets constricted to the mandate of a fair compensation would be a disingenuous reading of the text and, shall we say, offensive to the egalitarian spirit of the Constitution.

26. The constitutional discourse on compulsory acquisitions, has hitherto, rooted itself within the 'power of eminent domain'. Even within that articulation, the twin conditions of the acquisition being for a public purpose and subjecting the divestiture to the payment of compensation in lieu of acquisition were mandated[11]. Although not explicitly contained in Article 300A, these twin requirements have been read in and inferred as necessary conditions for compulsory deprivation to afford protection to the individuals who are being divested of property[12]. A post-colonial reading of the Constitution cannot limit itself to these components

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[9] 300A of the Constitution: "*Persons not to be deprived of property save by authority of law. – No person shall be deprived of his property save by authority of law.*"
[10] *Lachhman Dass* v. *Jagat Ram*, (2007) 10 SCC 448; *Vidya Devi* v. *State of Himachal Pradesh*, (2020) 2 SCC 569.
[11] *State of Bihar* v. *Maharajadhiraja Sir Kameshwar Singh of Darbhanga*, (1952) 1 SCC 528.
[12] *Hindustan Petroleum Corporation Ltd* v. *Darius Shapur Chenai*, (2005) 7 SCC 627; *K.T. Plantation Pvt Ltd* v. *State of Karnataka*, (2011) 9 SCC 1.

alone. The binary reading of the constitutional right to property must give way to more meaningful renditions, where the larger right to property is seen as comprising intersecting sub-rights, each with a distinct character but interconnected to constitute the whole. These sub-rights weave themselves into each other, and as a consequence, State action or the legislation that results in the deprivation of private property must be measured against this constitutional net as a whole, and not just one or many of its strands.

27. What then are these sub-rights or strands of this swadeshi constitutional fabric constituting the right to property? Seven such sub-rights can be identified, albeit non-exhaustive. These are: i) duty of the State to inform the person that it intends to acquire his property – *the right to notice*, ii) the duty of the State to hear objections to the acquisition – *the right to be heard*, iii) the duty of the State to inform the person of its decision to acquire – *the right to a reasoned decision*, iv) the duty of the State to demonstrate that the acquisition is for public purpose – *the duty to acquire only for public purpose*, v) the duty of the State to restitute and rehabilitate – *the right of restitution or fair compensation*, vi) the duty of the State to conduct the process of acquisition efficiently and within

prescribed timelines of the proceedings – *the right to an efficient and expeditious process*, and vii) final conclusion of the proceedings leading to vesting – *the right of conclusion*.

28. These seven rights are foundational components of a law that is tune with Article 300A, and the absence of one of these or some of them would render the law susceptible to challenge. The judgment of this Court in *K.T. Plantations* (supra)[13] declares that the law envisaged under Article 300A must be in line with the overarching principles of rule of law, and must be *just*, *fair*, and *reasonable*. It is, of course, precedentially sound to describe some of these sub-rights as 'procedural', a nomenclature that often tends to undermine the inherent worth of these safeguards. These seven sub-rights may be procedures, but they do constitute the real content of the right to property under Article 300A, non-compliance of these will amount to violation of the right, being without the *authority of law*.

29. These sub-rights of procedure have been synchronously incorporated in laws concerning compulsory acquisition and are also recognised by our constitutional courts while reviewing administrative actions for compulsory acquisition of private

[13] *K.T. Plantation Pvt. Ltd.* v. *State of Karnataka,* (2011) 9 SCC 1.

property. The following will demonstrate how these seven principles have seamlessly become an integral part of our Union and State statutes concerning acquisition and also the constitutional and administrative law culture that our courts have evolved from time to time.

30. Following are the seven principles:

30.1. ***The Right to notice***: (i) A prior notice informing the bearer of the right that the State intends to deprive them of the right to property is a right in itself; a linear extension of the right to know embedded in Article 19(1)(a). The Constitution does not contemplate acquisition by ambush. The notice to acquire must be clear, cogent and meaningful. Some of the statutes reflect this right.

(ii) Section 4 of the Land Acquisition Act, 1894, Section 3(1) of the Requisitioning and Acquisition of Immovable Property Act, 1952, Section 11 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and Section 3A of the National Highways Act, 1956 are examples of such statutory incorporation of the right to notice before initiation of the land acquisition proceedings.

(iii) In a large number of decisions, our constitutional courts have independently recognised the right to notice before any process of acquisition is commenced[14].

30.2. ***The Right to be heard*:** (i) Following the right to a meaningful and effective prior notice of acquisition, is the right of the property-bearer to communicate his objections and concerns to the authority acquiring the property. This right to be heard against the proposed acquisition must be meaningful and not a sham.

(ii) Section 5A of the Land Acquisition Act, 1894, Section 3(1) of the Requisitioning and Acquisition of Immovable Property Act, 1952, Section 15 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and Section 3C of the National Highways Act, 1956, are some statutory embodiments of this right.

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[14] In *Narendrajit Singh* v. *State of U.P.*, (1970) 1 SCC 125, it was held that a notification under Section 4 of the Land Acquisition Act, 1894, even in urgent cases falling under Section 17 of the Land Acquisition Act, 1894 is the *sine qua non* of the process of acquisition. In *State of Mysore* v. *Abdul Razak Sahib*, (1973) 3 SCC 196, it was held that a notice under Section 4 of the Land Acquisition Act, 1894 is necessary for completing the land acquisition process. In *Narinderjit Singh and Ranjit Singh* v. *State of U.P.*, (1973) 1 SCC 157, this Court held that the notice under Section 4 of the Land Acquisition Act, 1894 is mandatory and if no notice is published, the entire process of land acquisition is vitiated. In *Competent Authority* v. *Barangore Jute Factory*, (2005) 13 SCC 477, this Court held that if the initial notification under Section 3A of the National Highways Act, 1956 is bad, the entire process which is followed in pursuance of it is vitiated.

(iii) Judicial opinions recognizing the importance of this right are far too many to reproduce. Suffice to say that that the enquiry in which a land holder would raise his objection is not a mere formality[15].

30.3. ***The Right to a reasoned decision*****:** i) That the authorities have heard and considered the objections is evidenced only through a reasoned order. It is incumbent upon the authority to take an informed decision and communicate the same to the objector.

(ii) Section 6 of the Land Acquisition Act, 1894, Section 3(2) of the Requisitioning and Acquisition of Immovable Property Act, 1952, Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and Section 3D of the National Highways Act, 1956, are the statutory incorporations of this principle.

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[15] In *Nandeshwar Prasad* v. *State of U.P.*, AIR 1964 SC 1217, this Court has held the right under Section 5A of the Land Acquisition Act, 1894 to be a substantial one and it cannot be taken away. In *Hindustan Petroleum Corpn. Ltd.* v. *Darius Shapur Chenai*, (2005) 7 SCC 627, this Court has held that the right of submitting objections under Section 5A of the Land Acquisition Act, 1894 is a valuable right and the hearing given in pursuance of exercise of this right must not be rendered to a mere formality. In *Union of India* v. *Shiv Raj*, (2014) 6 SCC 564, this Court held that the rules of natural justice have been ingrained in the scheme of Section 5A of the Land Acquisition Act, 1894. In *Competent Authority* v. *Barangore Jute Factory*, (2005) 13 SCC 477, this Court observed that in the process from the initial notification to the final declaration, objections play a vital road. In *Kamal Trading (P) Ltd.* v. *State of W.B.*, (2012) 2 SCC 25, this Court quashed the land acquisition proceedings when a proper hearing under Section 5A of the Land Acquisition Act, 1894 was not accorded. In *Gojer Bros. (P) Ltd.* v. *State of W.B.*, (2013) 16 SCC 660, this Court held quashed the land acquisition proceedings when it was observed that a mere formality was rendered in the name of a hearing under Section 5A of the Land Acquisition Act, 1894.

(iii) Highlighting the importance of the declaration of the decision to acquire, the Courts have held that the declaration is mandatory, failing which, the acquisition proceedings will cease to have effect[16].

30.4. ***The Duty to acquire only for public purpose:*** (i) That the acquisition must be for a public purpose is inherent and an important fetter on the discretion of the authorities to acquire. This requirement, which conditions the purpose of acquisition must stand to reason with the larger constitutional goals of a welfare state and distributive justice.

(ii) Sections 4 and 6 of the Land Acquisition Act, 1894, Sections 3(1) and 7(1) of the Requisitioning and Acquisition of Immovable Property Act, 1952, Sections 2(1), 11(1),15(1)(b) and 19(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and Section 3A(1) of the National Highways Act, 1956 depict the statutory incorporation of the public purpose requirement of compulsory acquisition.

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[16] In *Mohan Singh* v. *International Airport Authority of India*, (1997) 9 SCC 132, this Court held that publication of a declaration under Section 6 of the Land Acquisition Act, 1894 is mandatory. In *Project Director, Project Implementation Unit* v. *P.V. Krishnamoorthy*, (2021) 3 SCC 572, this Court held that if a declaration is not published under Section 3D of the National Highways Act, 1956 then the initial notification and resultantly, the acquisition proceedings cease to have effect.

(iii) The decision of compulsory acquisition of land is subject to judicial review and the Court will examine and determine whether the acquisition is related to public purpose. If the court arrives at a conclusion that that there is no public purpose involved in the acquisition, the entire process can be set-aside. This Court has time and again reiterated the importance of the underlying objective of acquisition of land by the State to be for a public purpose[17].

30.5. ***The Right of restitution or fair compensation:*** (i) A person's right to hold and enjoy property is an integral part to the constitutional right under Article 300A. Deprivation or extinguishment of that right is permissible only upon restitution, be it in the form of monetary compensation, rehabilitation or other similar means. Compensation has always been considered to be an integral part of the process of acquisition.

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[17] In *Somawanti* v. *State of Punjab*, 1962 SCC OnLine SC 23, this Court held that the Constitution permits acquisition of private land by the State only for a public purpose. The rationale of taking away private land by the State for a public purpose is that private interest must give way to public interest as observed by the Court in *Daulat Singh Surana* v. *First Land Acquisition Collector*, (2007) 1 SCC 641. In *Union of India* v. Ja*swant Rai Kochhar*, (1996) 3 SCC 491 and *D. Hanumanth SA* v. *State of Karnataka*, (2010) 10 SCC 656, this Court held acquisition proceedings to be valid even if there was a change in the public purpose, so long as there is a public purpose for which the land is acquired. The importance of the communication of public purpose as an ingredient of the notification for acquisition was reiterated by this Court in *Munshi Singh* v. *Union of India*, (1973) 2 SCC 337 when acquisition proceedings were set aside since the public purpose was mentioned as "*planned development of the area*" which was observed to be wholly insufficient and conveyed no idea as to the specific purpose. Similarly, in *Madhya Pradesh Housing Board* v. *Mohd. Shafi*, (1992) 2 SCC 168, wherein this Court quashed the acquisition proceedings on the ground that the public purpose was mentioned as "*residential*" which was too vague.

(ii) Section 11 of the Land Acquisition Act, 1894, Sections 8 and 9 of the Requisitioning and Acquisition of Immovable Property Act, 1952, Section 23 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and Sections 3G and 3H of the National Highways Act, 1956 are the statutory incorporations of the right to restitute a person whose land has been compulsorily acquired.

(iii) Our courts have not only considered that compensation is necessary, but have also held that a fair and reasonable compensation is the *sine qua non* for any acquisition process[18].

30.6. ***The Right to an efficient and expeditious process:*** (i) The acquisition process is traumatic for more than one reason. The administrative delays in identifying the land, conducting the enquiry and evaluating the objections, leading to a final declaration, consume time and energy. Further, passing of the award, payment of compensation and taking over the possession

[18] In *State of U.P.* v. *Manohar,* (2005) 2 SCC 126, this Court held that payment of compensation is an integral part of the process of land acquisition. In *M. Naga Venkata Lakshmi* v. *Visakhapatnam Municipal Corpn.,* (2007) 8 SCC 748, this Court held that wherever promised, compensation is ought to be paid. In *NHAI* v. *P. Nagaraju*, (2022) 15 SCC 1, this Court held that compensation must be adequate and must be arrived at keeping in mind the market value of the acquired land. In *Vidya Devi* v. *State of H.P.*, (2020) 2 SCC 569, this Court held that even though compensation is not expressly provided for under Article 300A of the Constitution, it can be inferred therein. In the American jurisprudence, payment of compensation has been made part of due process (See *Sweet* v. *Rechel* [159 US 380 (1895) : 40 L.Ed. 188], *Delaware L. & W.R. Co.* v. *Morristown* [276 US 182 (1928) : 72 L.Ed. 523] and *United States* v. *Caltex (Philippines)* [344 US 149 (1952) : 97 L.Ed. 157).

are equally time consuming. It is necessary for the administration to be efficient in concluding the process and within a reasonable time. This obligation must necessarily form part of Article 300A.

(ii) Sections 5A(1), 6, 11A, and 34 of the Land Acquisition Act, 1894, Sections 6(1A) and 9 of the Requisitioning and Acquisition of Immovable Property Act, 1952, Sections 4(2), 7(4), 7(5), 11(5), 14, 15(1), 16(1), 19(2), 25, 38(1), 60(4), 64 and 80 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and Sections 3C(1), 3D(3) and 3E(1) of the National Highways Act, 1956, prescribe for statutory frameworks for the completion of individual steps in the process of acquisition of land within stipulated timelines.

(iii) On multiple occasions, upon failure to adhere to the timelines specified in law, the courts have set aside the acquisition proceedings[19].

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[19] In *Roy Estate* v. *State of Jharkhand*, (2009) 12 SCC 194; *Union of India* v. *Mahendra Girji*, (2010) 15 SCC 682 and *Union of India* v. *Mahendra Girji*, (2010) 15 SCC 682, this Court has underscored the importance of following the timelines fixed by the statute. In *Mansaram* v. *S.P. Pathak*, (1984) 1 SCC 125, this Court has held that the powers relevant to the land acquisition process must be exercised within a reasonable time. In *Kerala State Housing Board* v. *Ramapriya Hotels (P) Ltd.*, (1994) 5 SCC 672, this Court has held that if the concerned legislation does not stipulate the time-frames within which the process or its components are to be completed, it amounts to a violation of Article 14 and Article 21 of the Constitution. In *Ram Chand* v. *Union of India*, (1994) 1 SCC 44, this Court has acknowledged the realisation of the Parliament that the authorities are not completing the acquisition proceedings within a reasonable time and thus, the Parliament has introduced time-limits. In *Ambalal Purshottam* v. *Ahmedabad Municipal Corpn.* (1968) 3 SCR 207, this Court held that a notification under Section 6 of the Land Acquisition Act, 1894 must be followed by a proceeding for determination of compensation without any unreasonable delay. In *Khadim Hussain* v. *State of U.P.*, (1976) 1 SCC 843, this Court held that excessive intervening delay

30.7. ***The Right of conclusion:*** (i) Upon conclusion of process of acquisition and payment of compensation, the State takes *possession* of the property in normal circumstances. The culmination of an acquisition process is not in the payment of compensation, but also in taking over the actual physical possession of the land. If possession is not taken, acquisition is not complete. With the taking over of actual possession after the normal procedures of acquisition, the private holding is divested and the right, title and interest in the property, along-with possession is vested in the State. Without final vesting, the State's, or its beneficiary's right, title and interest in the property is inconclusive and causes lot of difficulties. The obligation to conclude and complete the process of acquisition is also part of Article 300A.

ii) Section 16 of the Land Acquisition Act, 1894, Sections 4 and 5 of the Requisitioning and Acquisition of Immovable Property Act, 1952, Sections 37 and 38 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and Sections 3D and 3E of the National Highways Act, 1956, statutorily recognise this right of the acquirer.

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between notifications under Sections 4 and 6 of the Land Acquisition Act, 1894, keeping the landowner in suspense throughout, is illegal.

iii) This step of taking over of possession has been a matter of great judicial scrutiny and this Court has endeavoured to construe the relevant provisions in a way which ensures non-arbitrariness in this action of the acquirer[20]. For that matter, after taking over possession, the process of land acquisition concludes with the vesting of the land with the concerned authority. The culmination of an acquisition process by vesting has been a matter of great importance. On this aspect, the courts have given a large number of decisions as to the time, method and manner by which vesting takes place[21].

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[20] In *State of W.B.* v. *Vishnunarayan & Associates (P) Ltd.*, (2002) 4 SCC 134, this Court held that possession can be resumed by the acquirer only in a manner known to or recognised by law and it cannot resume possession otherwise than in due course of law. In *Jilubhai Nanbhai Khachar* v. *State of Gujarat*, 1995 Supp (1) SCC 596, this Court held that though eminent domain is the highest and most exact idea of property remaining in the Government, or in the aggregate body of the people in their sovereign capacity, even then the right to take possession of a private property must be exercised in the manner directed by the Constitution and the laws of the State, since deprivation of property must take place after following the procedure of law and upon ensuring due process.

[21] In *Girnar Traders (3)* v. *State of Maharashtra*, (2011) 3 SCC 1, this Court held that under the Land Acquisition Act, 1894, upon the payment of compensation and taking of possession of a land so acquired, the land is vested in the State free of encumbrances and the completion of such vesting of the land in the State amounts to the transfer of title from the owner to the State by a legal fiction. In *P. Chinnanna* v. *State of A.P.*, (1994) 5 SCC 486 and *Delhi Development Authority* v. *Reena Suri*, (2016) 12 SCC 649, this Court held that mere passing of award under the Land Acquisition Act, 1894 will not suffice to vest the land in the State since taking possession is of utmost importance. In *Fruit & Vegetable Merchants Union* v. *Delhi Improvement Trust*, 1956 SCC OnLine SC 37, this Court held that once the land is vested in the State, it is vested neither for a limited purpose nor for a limited duration. Further, in *Union of India* v. *Tarsem Singh*, (2019) 9 SCC 304, this Court observed that the National Highways Act, 1956 has an object of reducing delay in the process of land acquisition in order to speedily implement projects pertaining to highways. It is in this context that this Court held that under Section 3D of the National Highways Act, 1956, the land to be acquired vests in the Union upon the publication of a notification declaring the acquisition, which is done after the disposal of objections of the land-owner, if any.

31. The seven principles which we have discussed are integral to the *authority of law* enabling compulsory acquisition of private property. Union and State statutes have adopted these principles and incorporated them in different forms in the statutes provisioning compulsory acquisition of immovable property. The importance of these principles, independent of the statutory prescription have been recognised by our constitutional courts and they have become part of our administrative law jurisprudence.

32. ***Conclusions:*** Returning to the legal submissions of the counsel for the appellant-Corporation, as we have noticed that Section 352 does not provide for any procedure whatsoever, we reject the contention that it contemplates the power of acquisition. We have already held that Section 352 is only intended to enable the Municipal Commissioner to decide whether a land is to be acquired for public purpose. The power of acquisition is in fact vested with the State under Section 537 and it will exercise it, in its own discretion, whenever the Municipal Commissioner makes an application to that effect. We have also agreed with the decision of the High Court that Section 363 is not a provision for compensation for compulsory

acquisition. In this context, we have also held that a valid power of acquisition coupled with the provision for fair compensation by itself would not complete and exhaust the power and process of acquisition. Prescription of the necessary procedures, before depriving a person of his property is an integral part of the '*authority of law*', under Article 300A and, Section 352 of the Act contemplates no procedure whatsoever.

33. We are not referring to the detailed facts of the case involving multiple rounds of litigation where the respondents have taken inconsistent stands about the ownership and acquisition of the Property. There is no doubt in our mind that the exercise of the power is illegal, illegitimate and has caused great difficult to the respondent-land-bearer. It is necessary to refer to the findings of the learned single Judge that the appellant-Corporation acted in blatant violation of statutory provisions, these findings are as follows:

> "*The facts disclosed by the Corporation in the Affidavit-in-Opposition evidently shows that the acquisition was made by invoking Section 352(a) of the said Act by exercising the power of eminent domain. There was a doubt in the mind of some of the Municipal Authorities whether such sovereign power can be exercised by the Statutory Authority like the Corporation and a legal opinion was sought by the Chief Municipal Law Officer from one of the Senior Advocates. The Senior Advocate, however, doubted over the said exercise of power and*

also highlighted the anomalies in such action. On the basis of such opinion the Chief Municipal Officer made the following remark: -

"Doubt has arisen in the past on the question whether the Municipal Commissioner could under Section 352(a) of the CMC Act, 1980 straightway compulsorily acquire any land by giving notice to owner/occupiers also in contract Newspapers and pay compensation under Section 363(3) of the Act. The former Ch. Mpl. Law Officer had referred the question to Mr. P.K. Ghoah Senior Advocate for his opinion. A copy of his opinion is placed below for persual. I have nothing more to add. If in spite of the anomalies in the statute pointed out by Mr. P.K.Ghosh the Mpl. Commissioner proceeds to take possession of the land in question, I have no comment to make. If the aggrieved party moves the Court, then the Court will resolve the anomalies."

It is curious to note that despite the same, the then Mayor put a note that the Corporation may proceed to acquire the property by invoking powers under Section 352(a) and the note of the Chief Municipal Law Officer was simply kept in the file. It would further appear from the subsequent noting of the Chief Municipal Law Officer put on 08.01.1991 wherein it is noted that the act is silent as to when the possession is to be taken either before or after the payment of compensation under Section 363 and according to him, the possession can only be taken after the payment of compensation under Section 363(3) of the said Act. Despite the aforesaid noting, the Municipal Commissioner passed an order of acquisition on 18.01.1991 directing to acquire the subject land under Section 352(a) of the Act with immediate effect and the possession should also be taken immediately. There is a serious dispute whether the possession was in fact taken in terms of the said order of the Municipal Commissioner or not. However, it is seen from the notes put on 16.03.1991 that the possession was taken. The fact remains that no compensation has been paid as yet. The Corporation has further disclosed a letter allegedly written by the

recorded owner on 14.11.1991 wherein it is categorically stated that the possession has not been taken. Though it appears from the noting that the possession was taken way back in 1991 but the record maintained by the Corporation was not altered and/or corrected and in fact the Corporation continued to accept the property tax paid by the recorded owner in respect of the said property. Even in the year 2000, the Corporation mutated the name of the Birinchi Behari Shaw and also issued the No Due Certificate to him. It is only in the year 2010 the Corporation deleted the name of the said owner and incorporated its name as owner thereof. Yet, showing the huge outstanding on account of property tax with interest and penalty in the letter of intimation issued on 17.07.2010. The explanation is sought to be offered that there is no synchronization between the two departments of the Corporation and a mistake has been committed, which cannot confer any equity or right in favour of the Petitioner.

I am unable to persuade myself to agree with such explanation. For the sake of argument, if it is accepted that possession was taken way back in 1991, there was no occasion to accept the property tax for more than a decade without altering the entries made in the assessment register.

This Court, therefore, finds that the Corporation acted blatantly in violation of the statutory provision in acquiring the property as such acquisition should have been facilitated by approaching the State under Section 537(1) of the said Act. The entire action concerning the acquisition of property by invoking Section 352(a) of the Act is per se illegal, invalid and in clear contravention to the provisions of the Act and are hereby quashed and set aside."

34. In the above analysis, we are of the considered opinion that the High Court was fully justified in allowing the writ petition and rejecting the case of the appellant-Corporation acquiring

land under Section 352 of the Act. The impugned judgment does not brook interference on any count.

35. Having considered the matter in detail, we dismiss the appeal arising out of SLP (C) No. 4504 of 2021 filed by the appellant-Corporation against the judgment of the High Court of Calcutta in APO No. 523 of 2017 dated 17.12.2019 with costs quantified at Rs. 5,00,000/-, to be paid to respondent no. 1 within a period of sixty days from today.

36. Pending application(s), if any, shall be disposed of.

.....**J.**
[PAMIDIGHANTAM SRI NARASIMHA]

.....**J.**
[ARAVIND KUMAR]

NEW DELHI;
MAY 16, 2024.