

(1988) 07 CAL CK 0006

Calcutta High Court

Case No: Matter No. 1430 of 1986

Satyam Co-Operative Housing
Society Ltd.

APPELLANT

Vs

Calcutta Improvement Trust and
Others

RESPONDENT

Date of Decision: July 20, 1988

Acts Referred:

- Constitution of India, 1950 - Article 226
- Land Acquisition Act, 1894 - Section 10, 11, 11A, 17, 23

Citation: 93 CWN 603

Hon'ble Judges: Probir Kumar Majumdar, J

Bench: Single Bench

Advocate: Bhaskar Gupta, Santir Chakraborty, Abhijit Chatterjee and P.K. Jhunjhunwalla, for the Appellant; P.K. Sengupta, M.N. Dasgupta and Sujit Basu for the C.I.T., S. Ukil, Government Pleader, for Land Acquisition Collector and State Government, Pradip Ghose, Barin Banerjee and Roma Banerjee for Calcutta Municipal Corporation, for the Respondent

Final Decision: Allowed

Judgement

Probir Kumar Majumdar, J.

By this application under article 226 of the Constitution the legality and validity of the acquisition proceedings initiated in respect of No. 9B, Bechulal Road, Calcutta-K has been challenged by the petitioner Satyam Co-operative Housing Society Ltd. The challenge in subsistence is that there has been undue and unexplained delay on the part of the Calcutta Improvement Trust the respondent no.1 and also Land Acquisition. Collector the respondent no. 4 in proceeding with the acquisition proceedings. The petitioner No. 1 is a Co-operative Society (hereinafter referred to as the Society) registered under West Bengal Co-operative Societies Act, 1973 and consist of about 85 members belonging to the low and middle income ground, who

do not own any residential accommodation in the town of Calcutta. The petitioner no. 2 is a member of the said society. The society was formed for the purpose of providing residential accommodation to its members by constructing building at premises no. 9B, Bechulal Road, Calcutta (hereinafter referred to as the said premises).

2. The said premises was initially a part of the premises No. 9, Bechulal Road, Calcutta which belonged to Lahas. The said Lahas had, inter alia, mortgaged the said premises in favour of Bengal Central Bank Ltd. which was subsequently renamed as United Bank of India Ltd. As the said Lahas failed to perform and observe the terms and condition's of the said mortgage the United Bank of India filed a mortgage suit against the Lahas in regard to the said premises no. 9B, Bechulal Road, Calcutta. Such mortgage suit was filed in or about 1953.

3. On or about 20th March, 1957 a final decree for sale was passed in the said mortgage suit and the registrar, Original Side, of this Court was directed to sell the premises. In pursuance of the said decree the Registrar Original Side of this Court took steps for sale of the said premises, no. 9B, Bechulal Road, Calcutta, inter alia, after giving wide publicity before conducting such sale. Notice of sale was duly published in various newspapers in or about 1967 and at the sale held by the Registrar, Original Side, of this Court on or about 24th June, 1976, the United Bank of India Ltd. being the mortgagee, namely the plaintiff in the said mortgage suit, being declared as the highest bidder, purchased the property for a sum of Rs. 1,25,000/-. The aforesaid sale was confirmed by an order dated 12th June, 1969 by this Court and the said certificate of sale was duly signed and issued by the Registrar of this Court. The said certificate of sale was also registered with the Registrar of Assurance, Calcutta. Thereafter, the said Laha approached the said United Bank of India Ltd., the plaintiff in the said mortgage suit for release and re-transfer of the said premise-being no. 9B, Bechulal Road, Calcutta. The matter was being considered by the bank and by a resolution of its Board dated 20th June, 1981 the United Bank of India Ltd. agreed to sell and transfer the said premises no. 9B, Bechulal Road, Calcutta to Lahas or their nominees at a consideration of Rs. 3,06,000/-.

4. In or about December, 1981, the promoters of the petitioner no. 1 approached the Lahas to nominate them as the nominees in respect of the said premises. Pursuant to such negotiations with Lahas by the promoters of the petitioner no. 1 an agreement was arrived at between the petitioner no. 1 on the one hand and the said Lahas on the other. The said Lahas in or about December, 1981 nominated the promoters of the society the petitioner no. 1 as their nominees to obtain conveyance of the said premises from the United Bank of India. The said promoters of the Society made due searches as to whether the said premises was attached by any acquisition or requisition. On enquiry the promoters found that the said premises was free from all encumbrances, attachment and lispendes so far as the

title was concerned. The promoters of the society, thereafter made payment of the entire purchase consideration of Rs.3,00,000/- on or about 23rd March, 1982." Thereafter, the society was duly incorporated and registered in October, 1983 under the West Bengal Co-operative Societies Act, 1973 and after such incorporation of the society the United Bank of India on 18th January, 1984 duly executed and registered and conveyance in favour of the Co-operative Society. This is how the society, the petitioner no. 1 has become interested in the said premises. It is also alleged that the petitioners are thus the bona fide purchaser of the said premises for value and have paid the entire consideration acquired the said premises without, however, any notice or knowledge of any attachment, acquisition or requisition. The petitioners engaged architects M/s. K. Bhaskar and Ajitav, to make a building plan and getting the same sanctioned from the authority concerned.

5. On or about July 17, 1984 the said architects made an application to the Calcutta Improvement Trust for obtaining Clearance/No-Objection. Certificate from the said authorities in accordance with the provisions of the Calcutta Municipal Corporation Act, 1980 (hereinafter referred to as the CWM Act) and/or Calcutta Improvement Act, 1911 (hereinafter referred to as C.I. Act).

6. It is alleged that by a letter dated August 17, 1984 the concerned authorities duly granted approval and/or no objection certificate to the society and confirmed that the said premises was not affected by any sanctioned/published scheme/alignment under the C.I. Act. It also alleged that the said architects also applied to Calcutta Metropolitan Development Authorities and also Calcutta Municipal Corporation for their approval and according to the petitioners- Calcutta Metropolitan Development Authorities by its letter dated July 3, 1984 duly, confirmed that the said premises was not under any scheme of the Calcutta Metropolitan Development Authorities. According to the petitioners, Calcutta Municipal Corporation also by their letter dated 24th September 1984 confirmed that the said site was free from any street alignment.

7. After obtaining necessary clearance, the said architects on behalf of the petitioners duly submitted a building plan for sanction of the Corporation. The plan envisaged construction of 5 buildings of 18 meters height for providing residential accommodation to about 85 members of the all belonging to low and middle income group. It is alleged by the petitioners that the said plan was submitted along with clearance and/or no objection certificate dated August 7, 1984 issued by the respondent no. 2 and the other certificate dated August 7, 1984 issued by the respondent no. 2 and the other certificates referred to above.

8. It is alleged that for the first time, in or about February 1985 the Society came to know from the respondent no. I that the said premises, was scheduled for acquisition for Housing Scheme No. XII by the respondent no. I which had also been sanctioned by the State Government sometime in the year 1967. This information was conveyed to the petitioners on behalf of the respondent no. I by a letter dated 13th February.

1985.

9. It also inspired by a letter dated 16th February, 1985 from the Chief Valuer of the Respondent no. 1 that the said premises was scheduled for acquisition for Housing scheme No. VI in the Calcutta Gazette and local newspapers on December 3, 1964 in the exercise of power granted u/s 43 of the C. I. Act. The petitioners were made known by the said letter dated 10th February, 1985 that the letter dated 7th August, 1984 whereby the society was informed that the said premises was not affected by any sanctioned or published scheme or alignment of the Trust, stood revoked.

10. Therefore, on or about that week of March, 1985 the society received a letter dated March 1, 1985 from the respondent no. 5 Calcutta Municipal Corporation stating, inter alia, that since the said premises was scheduled for acquisition under the Calcutta Improvement Trust Scheme No. XI of the respondent no. 1 the same attracted the provision of Section 396 of the CMC Act and as such the plan as submitted by the Society for construction of building on the said premises could not be considered. As a result, the said building plan for sanction was not sanctioned by the Calcutta Municipal Corporation.

11. By a letter dated May 6, 1985 the respondent no. 2 the Chief Valuer, Calcutta Improvement Trust informed the Society that the execution of the Calcutta improvement Trust Scheme No. XI which had been kept deferred since long and the planning committee of the respondent no. 1 by its meeting held on March 26, 1985 had cancelled the said scheme and the Board of the Respondent no. I had also approved of such cancellation. The Society was also informed that the State Government was being moved for necessary action.

12. It is alleged by the petitioners that immediately after obtaining the said clearance from the respondent no. I the Society once again requested the respondent no. 5 to sanction the said building plan which had been submitted on behalf of the Society. The respondent no. 5 before sanctioning the said building plan directed the Society to obtain a clearance certificate from the competent authorities under the Urban Land (Ceiling and Regulation) At, 1976. In pursuance of such direction the Society duly applied for and obtained on or about June 11, 1986 the clearance of the Competent Authority. under the said Urban Land (Ceiling and Regulation) Act, 1976.

13. It is alleged by the petitioners that after due compliance with all the requirements on the formalities by the Society, the respondent no. 5 by its building sanction no. 58(111) dated 23rd july, 1985 duly sanctioned the said building plan submitted by the Society u/s 369 of the said CMC Act.

14. It is the case of the petitioners that after having obtained sanctioned plan, the petitioners commenced construction of the building in the said premises in August, 1985.

15. While the construction was in progress and a substantial part thereof had been completed, the petitioners received a letter dated May 20, 1986 from the respondent no. 2. the Chief Valuer of the Calcutta Improvement Trust. By the said letter the respondent No. 2 informed the petitioners that the State Government had refused to accord sanction to the cancellation of the said Housing Scheme No. XL. Therefore, the said Housing Scheme No. XI in respect of the said premises was valid and operative. The petitioners after receipt of the said communication from the respondent no. 2 made various representations to the higher authorities, Hon"ble Chief Minister and the Hon"ble Minister-in-Charge of the Local Government and Urban Development, and also other concerned authorities requesting them for withdrawal of the said Scheme being Housing Scheme No. IX.

16. By a letter and/or memo dated June 10, 1986 the respondent no." 3 Deputy Chief Valuer informed the petitioners that a demarcation would take place on June 17, 1986. In reply to the said memo the petitioners informed the concerned respondent authorities that no useful purpose would be served by taking any measurement. The petitioners had taken up and completed almosty 40% of the consideration work. But inspite of that the officer of the respondent no. 1 visited the site and took necessary measurement and such measurement was taken after necessary objection being caused by the petitioners.

Therafter in or about July, 1986 the Society received a not no. 3130 sated 14th July, 1986 from the respondent no. I issued under Clauses 3 and 4 of Section 9 of the Land Acquisition Act 1894. By the said notice the respondent no. 4 the Land Acquisition Collector directed the Society to appear before the said authorities and produce the original title deeds and other documents.

17. The petitioners on or about August 21, 1986 received a notice u/s 401 of CMC Act issued by the respondent no.6, the Building Inspector Calcutta Municipal Corporation, whereby the Society was directed to stop forthwith the construction including addition and/or alteration at the said premises and the Society was also threatened, according to the petitioners, that in the event of failure the police assitance would be sought by the Corporation. It is alleged by the petitioners that after receipt of such notice the petitioners stopped construction at the premises.

18. The petitioners, thereafter, received two notices bearing nos. 5097 and 5098 both dated September 3, 1986 from the respondent no.4, the Land Acquisition Collector whereby the Society was informed that the said premises would be inspected on September 18, 1986 and that the respondent no. 4 will make an award on September 19, 1986 u/s 11 of the Acquisition Act.

19. As stated above, the petitioners by this writ application have challenged the said Special Notice No. 3130 issued by the Land Acquisition Collector dated July 14, 1986 the notice u/s 416 of the Calcutta Municipal Act, 1981 and/or the section under Calcutta Municipal Corporation Act issued by the Building Inspector respondent no.

6 dated August 21st 1986 and the said notice no. 5098 dated September 3, 1986 issued by the respondent no. 4 the Land Acquisition Collector, on inter alia, the ground contained in the petition.

20. The petitioners obtained Rule Nisi in this writ application. Thereafter, directions for affidavit were given and interim order was also issued staying operations or further action on the impugned notices. In this proceedings various affidavits and supplementary affidavits, with leave of Court have been filed on behalf of the Land Acquisition Collector, Calcutta Improvement Trust and the Calcutta Municipal Corporation. Affidavit in reply has also been filed by the petitioners.

21. Mr. Bhaskar Gupta, learned Counsel for the petitioners has mainly challenged this acquisition proceedings on the ground that there has been undue and unexplained delay on the part of the Calcutta Improvement Trust and the Land Acquisition Collector in concluding the acquisition proceedings. Mr. Gupta submits that admittedly the notice u/s 43 of the C.I. Act which is equivalent to a notice u/s 4 of the Land Acquisition Act, 1984 was issued on 14th November, 1964 and was published in the Calcutta Gazette and other newspapers on 3rd December 1964. Mr. Gupta also submits that it is not in dispute that a notification u/s 49(1) of the C.I. Act corresponding to Section 6 of the Land Acquisition Act, 1894) was published on 29th December, 1967. Mr. Gupta has submitted that it will appear that since the said publication of the notification u/s 49(1) of the C.I. Act, no steps were taken either by the Land Acquisition Collector the respondent no. 4 or by the Calcutta Improvement Trust the respondent no. 1 for the purpose of conclusion of the said acquisition proceedings initiated by a notice issued u/s 43 of the C.I. Act (which is equivalent to Section 4 notice under Land Acquisition Act, 1894). It has been submitted by Mr. Gupta that it is clear from the sequence of events that neither the respondent no. 1 nor the respondent no. 4 was serious in concluding the said acquisition proceedings in respect of the said premises. According to Mr. Gupta, it will also be evident from a few letters disclosed in this proceedings that the respondent no. 1 was never serious in taking up the said Housing Scheme and in fact did not take any positive steps for implementation of the alleged Housing Scheme being No. XI at the said premises and there is nothing on record to show as to what steps they have taken with regard to the implementation of the said Housing Scheme No. XI. Mr. Gupta submits that it will also appear from the correspondence disclosed that the respondent no. 1 had decided to abandon the scheme altogether and in fact by its Board resolution taken in the meeting held on 26th March, 1985 had cancelled the said scheme and the matter was referred to the State Government for the necessary approval. Mr. Gupta also submits that until the said decision of the respondent no. 1 to abandon the said Scheme the said scheme might be taken as valid and operative but the respondent no. 1 did not take any steps whatsoever from the stage of publication of the said notice of acquisition issued in or about September 1964, for implementation of the said Housing Scheme or for necessary sanction of the State Government (sic) for obtaining necessary financial

assistance from the State Government or other Financial Institutions. It would also appear, according to Mr. Gupta, from the correspondence on record that the respondent no. 1 also did not move the Land Acquisition authorities for expeditious conclusion of the acquisition proceedings initiated by said notice published in or about December 1964. It is, therefore, submitted by Mr. Gupta that from the conduct of respondents it would appear that none of the respondents, the respondent no. 1 nor the respondent no. 4 was eager to conclude the proceedings within a reasonable time from the date of initiation of the acquisition proceedings by the said notice dated 14th November, 1964 issued u/s 43 of the C.I.Act and published on 3rd December, 1964 in the Official Gazette or other newspapers. It has also been submitted by Mr. Gupta that it will also appear from record that immediately after the issuance of the said notice dated 14th November, 1964. the concerned respondent authorities invited objection under the provisions of the C.I.Act and disposed of the same in accordance with the provisions of the C.I.T. Act, but, curiously enough did not take steps whatsoever in concluding the proceedings within a reasonable time from the date of the initiation of the said acquisition proceedings initiated by the said notification dated 14th November, 1964. It has also been submitted by Mr. Gupta that from stage to stage petitioners or the predecessor in interest of the petitioners had been informed by the respondent no. 1 or the other authorities that the said premises was free from any attachment or alignment. It will also appear, according to Mr. Gupta that before according necessary sanction to the building plan submitted on behalf of the petitioners, the petitioners duly obtained no objection certificate from all concerned and complied with all the necessary formalities as enjoined by the relevant statutes, and after being satisfied that the petitioners had complied with all the necessary formalities the respondent Municipal Corporation duly accorded sanction to the building plans submitted on behalf of the petitioners.

22. It has been argued by Mr. Gupta that from the sequence of events starting from November, 1964 it will appear that the said acquisition proceedings in respect of the said premises were initiated with the only object of pegging down the price of the land at the rate prevailing in the year 1964 when the said notification dated 14th November, 1964 was issued u/s 43 of C.I.Act. It has also been submitted by Mr. Gupta that it will also appear that there is not genuine public purpose for the acquisition of the land in question. It is the submission of Mr. Gupta that the respondent authorities merely wanted to take a chance to acquire the land at a pegged down price whenever it found it necessary for any purpose. It is also submitted by Mr. Gupta that there is no genuine Housing Scheme No. XI in existence at the time of issuance of the said notification dated 14th November, 1964 u/s 43 of C.I.Act or the publication of the declaration u/s 49(0) of C.I.Act. It is, therefore, the argument of Mr. Gupta that it will appear from the facts of the case that the entire acquisition proceedings including the initiation thereof was made in colourable exercise of power.

23. In support of its contention that the said acquisition proceeding in respect of the said premises were initiated not for any genuine public-purpose but only with a view to pegging down the price of land in question at 1964 level Mr. Gupta has referred to and relied on the following decisions:

Ambalal Purshottam etc v. Ahmedabad Municipal Corporation, in the State of Ahmedabad and Ors., AIR - 1968 SC 1223 (1277 para - 11) Patel Shankarbhai Mohijibhai etc v. State of Gujarat & Ors.. AIR.1981 Gujarat - 67 pages 72 to 74 paragraphs 19, 20, 22, 23 and 24). P. Appale Murthy & Ors., v. State of Andhra Pradesh & Ors., AIR 1981 AP 278 (Pages 281, 282 paragraph 9 and 11). Radheshyam Gupta & Ors, v. State of Haryana & Ors., AIR 1982 P & H 519 (F.B.)

24. Mr. Gupta also submitted that the aforesaid contention of the petitioners that the land was sought to be acquired for the purpose of pegging down the prices is further reinforced by the admission contained in a note dated 20th July, 1977 of the Chairman of The Calcutta Improvement Trust which is set out in paragraph 4 of the supplementary affidavit filed on behalf of the respondent no. 4 and affirmed 29th July, 1987. The substance of the said note, according to Mr. Gupta is, as appears from the note itself, that the scheme has been notified in mid 1960 and hence the land costs will be paid at that price, at the maximum or may even be available under Urban Ceiling.

25. Mr. Gupta has also argued that it is true that the acquisition proceedings in respect of the said premises had been initiated by a notice issued by the respondent no. 1 u/s 43 of C.I.Act. It will appear from the Section 71 of C.I.Act that for the purpose of acquiring land the Land Acquisition Act shall be subject to modification as indicated in the schedule will apply. Mr. Gupta also submits that it will also appear from the schedule referred to above that the publication of notice u/s 43(ii) of C.I.Act shall be substituted for and have the same effect as the publication of a notification u/s 4 of the Land Acquisition Act, 1894. It also appears from C.I.Act, according to Mr. Gupta that the publication of a notification u/s 49 of the C.I.Act shall be substituted for and have the same effect as a declaration u/s 6 of the Land Acquisition Act, 1894. Mr. Gupta also submits that it will also appear from the C.I.Act that u/s 69 of the Act the Board of Trustees for the Improvement of Calcutta has been empowered to acquire the land under the provisions of the Land Acquisition Act, 1894. Therefore, it is the submission of Mr. Gupta that the cases cited by him dealing with the Land Acquisition cases will also be applicable to the present case of acquisition proceedings initiated by a notice issued by the respondent no. 1 u/s 43 of the C.I. Act.

26. An alternative argument has also been made by Mr. Gupta in challenging the said acquisition proceedings. It has been submitted by and on behalf of the petitioners that the respondent are estopped from going ahead with the acquisition proceedings and depriving the petitioners of the land in question. The petitioners have taken a specific ground in the petition with regard to the question of estoppel.

It has been submitted by Mr. Gupta that petitioners have taken steps for construction of the building the said premises after duly moving the authorities including the Calcutta Municipal Corporation and the Calcutta Improvement Trust and it was on the basis of their assurances that the land was not the subject matter of any acquisition or requisition proceedings and on the basis of the sanctioned plan for the proposed building the petitioners invested huge sums of money and altered its position to its prejudice. It is the submission of Mr. Gupta that the principles of promissory estoppel apply with full force. In this connection, Mr. Gupta has referred to and relied on decision of the Supreme Court in the case of Gujarat State Financing Corporation v. Lotus Hotel, reported in AIR 1983 Supreme Court 848.

27. Mr. Gupta has also submitted that a point has been taken in the affidavit filed on behalf of the respondent no. 1 that there has been delay on the part of the petitioners" in moving the writ application and as such the writ application ought not to be entertained.

28. Mr. Gupta submits that in the present case the inordinate and unexplained delay between the publication of the notification u/s 43 of C.I.Act and even after the publication of the notification under the said Section 49 of C.I.Act, the delay on the part of the respondents in concluding the acquisition proceedings is the cause of action for the petitioners to move the Court and no question of delay on the part of the petitioners is relevant consideration in this instant case. In this connection, Mr. Gupta relies on the decision of the aforesaid case reported in AIR 1981 Gujarat 67 and the case reported in AIR 1981 Andhra Pradesh 278.

29. Mr. Gupta has submitted that no explanation has been furnished by either Calcutta Improvement Trust or the Land Acquisition Collector of the inordinate delay in concluding the acquisition proceedings.

30. Mr. Gupta also refers to another point of the objection taken by the respondents that the petitioners have not since challenged the said notification dated 14th November, 1964 issued u/s 43 of the declaration u/s 49 of the C.I.Act. In the instant writ application no relief can be granted to the petitioners unless the said two notifications are declared to be void by this court. Mr. Gupta also refers to appointment taken by the respondents in their affidavits that there being no prayer for the same, this Court ought not to quash the said notification and/or publication.

31. In answer to that, Mr. Gupta submits that in this writ petition the petitioners have challenged the entire acquisition proceedings of the respondents and according to Mr. Gupta prayer (b) of the petition is wide enough to cover the entire acquisition proceedings.

This is in substance the argument on behalf of the petitioners in this proceedings.

32. Mr. P. K. Sengupta the learned Counsel for the Calcutta Improvement Trust has submitted that this writ petition is entirely misconceived application. Mr. Sengupta

submits that it will appear from prayer (a) of the petition that the petitioner has asked for cancellation and/or revocation of the notice dated 14th July, 1986 and the notice dated 3rd September, 1936. The impugned notices, according to Mr. Sengupta, are all directed against either the respondent State or the respondent Calcutta Municipal Corporation and there has been no challenge to the action taken by the respondent no. 1 the Calcutta Improvement Trust Authorities with regard to the acquisition of the said premises. He submits also that the impugned notice dated 14th November, 1964 issued by the respondent no. 1 u/s 43 of C.I.Act and also the declaration issued by the respondent no. 1 u/s 49 of the C.I.Act cannot now be challenged by the petitioners after such a long delay. It is also the submission of Mr. Sengupta that in any event, this writ application is not maintainable inasmuch as the petitioners have not challenged the said two notifications issued under the said C.I.Act under Sections 43 and 49 of the C.I.Act, respectively. Therefore, the substance of the argument of Mr. Sengupta is that without challenging the said notifications initiating the acquisitions proceedings in respect of the said land, this writ application is not maintainable at all, and it should be dismissed.

33. Mr. Sengupta also submits that the delay, if any, in implementation of the said Housing Scheme in the said premises was due to certain circumstances which were not within the control of the respondent No.1. It is the submission of Mr. Sengupta that the respondent no. 1, the Calcutta Improvement Trust will have to depend upon the financial aid from other sources including the State for the implementation of any project in hand. Mr. Sengupta submits that it is true that under the provision of the C.I.Act particularly Section 49 of the C.I.Act that Calcutta Improvement Trust should execute the scheme "forthwith". But the financial stringency did not enable the respondent no. 1 to execute the said scheme forthwith. In this circumstances, the respondent no. 1 according to Mr. Sengupta, could not take up scheme in hand and implement the same. Mr. Sengupta submits that the expression "forthwith" has to be interpreted in the context of the circumstances. Mr. Sengupta has also submitted that for the reasons as stated above, the entire scheme has to be deferred for quite sometime and could not be taken in hand in view of the absence of necessary financial aid.

34. Regarding cancellation of this scheme, Mr. Sengupta submits that in accordance with the provisions of section 50 of the C.I. Act the recommendation for cancellation of the scheme is subject to the sanction of the State Government and without such sanction being obtained no cancellation of the scheme can be given effect to. It is a fact that the State Government refused to accord sanction to the said resolution of the Board recommending cancellation of the scheme. It has been submitted also on behalf of the Calcutta Improvement Trust that the Calcutta Improvement Trust was passing through severe financial constraints was desperately looking for necessary aid to make the project viable. Therefore, according to Mr. Sengupta, the hands of the Calcutta Improvement Trust authorities were tied and the scheme could not be implemented until necessary finances were provided for to implement the scheme.

The substance of the argument of Mr. Sengupta is, that there was no delay on the part of the respondent no, 1 the Calcutta Improvement Trust.

35. It is the argument of Mr. Sengupta that any acquisition proceedings can be challenged either on the ground that it is not for public purpose or on the ground that necessary formalities for initiating the proceedings were not complied with. Mr. Sengupta submits that in the present case this is not the case of the petitioners nor have they challenged the proceedings on the ground that there is no public purpose nor on the ground of the non-compliance with the statutory formalities.

36. It has also been submitted by Mr. Sengupta that the letter dated 7th August, 1984 issued by the Calcutta Improvement Trust cannot be taken as a clearance certificate or no objection certificate. It would clearly appear from the said letter that the scheme "falls within the area for which the CIT has been taking necessary preparatory measures for framing of some improvement scheme." Mr. Sengupta has pointed out that the letter also stipulates that in the event of such scheme being framed and published u/s 43 of the Calcutta Improvement Act, the provisions of Article 90Xc) of the schedule of the Calcutta Improvement Act will be attracted. This fact should be taken into consideration before any development programme for the land is contemplated.

37. Mr. P. K. Sengupta on behalf of the respondent Calcutta Improvement Trust has also submitted that the land is sought to be acquired for the purpose of Calcutta Improvement Trust and the entire acquisition proceedings is to be governed by the relevant provisions of the C.I. Act. Although, it is true, that the provision relating to issuance of the notice initiating the acquisition proceedings and the provisions relating to declaration are more or less similar to section 4 and section 6 and Section 9 of the Land Acquisition Act, 1984. It is submitted by Mr. Sengupta that the compensation that has to be determined in this acquisition proceedings would be in accordance with the provisions of the Land Acquisition Act but the Article 9(3Xc) of the scheme to the said Calcutta Improvement Act, 1911 and other relevant provision relating to acquisition have also indicated the mode of determination of compensation.

38. Mr. Sengupta has also argued that it was made clear in the said letter dated 7th August, 1984 that the said land falling within the area for which the Calcutta Improvement Trust has been taking necessary preparatory measures for framing some improvement scheme, the provisions of Article 9(3Xc) of the scheme to the C.I. Act would be attracted. Therefore, the petitioners, according to Mr. Sengupta, proceeded with the construction after having knowledge of the fact that the said premises could be under any improvement scheme and the petitioners were subsequently informed that the said premises was under a notification of acquisition issued sometime in 1964. Therefore, the petitioners at their risk proceed with the construction knowing the relevant facts and if there is any damage or any loss suffered by the petitioner, the petitioners may look to Calcutta Municipal

Corporation which sanctioned the building plan for such loss or damage in the event of land being acquired by the Calcutta Improvement Trust.

39. In summing up his argument Mr. Sengupta submits that the petitioners, cannot by this application challenge the proceedings after 20 years or so. The petitioners, not having challenged notification issued u/s 43 of the publication thereof u/s 49(2) of the C.I.Act, cannot now be allowed to challenge the acquisition proceedings on the ground that the entire object of the acquisition proceedings was to peg down the prices or that the authorities concerned should not have been allowed to proceed with the acquisition after so much delay. It is the submission of Mr. Sengupta that it is the petitioners who have challenged the acquisition proceedings after long delay and this petition should be dismissed on this ground alone."

40. On the question of pegging down the prices, the argument of Mr. Sengupta is that the petitioners would be fully compensated in view of the increase of the solatium as provided in Section 23 of the Land Acquisition Act which has now been raised to 30% and also the rate of interest in Section 34 of the Land Acquisition Act which has now been raised to 12%. Therefore, even if there is any" delay on the part of the authorities concerned the petitioners have not suffered on this account.

41. Mr. S. C. Ukil, the learned Government Pleader appearing with Mr. Aloke Ghose for the State submits that from the correspondence disclosed in this proceedings it would appear that there has not been any delay on the part of the land acquisition authorities. The learned Government Pleader has referred to few facts in support of his contention that is client cannot be blamed for delay, if any. The Chairman of Calcutta Improvement Trust by his letter dated 30th October, 1968 requested the Land Acquisition Collector to start the land acquisition proceedings. But in the absence of the order u/s 17 of the Land Acquisition Act, 1894, the land acquisition proceedings could not be commenced and, therefore, the Government was requested by letter dated 14th November, 1965 to take steps for issuance of the order u/s 7 of the Land Acquisition Act. Thereafter, the Assistant Secretary to the Government by letter dated 10th May, 1971 informed the land acquisition collector u/s 7 of the said Act of 1894 to take steps for the acquisition of the land, But subsequently the Chief Valuer of the Calcutta Improvement Trust by his memo dated 31st may, 1971 informed the second Land Acquisition Collector that the scheme has been deferred and there is no Budget provision for land acquisition for the year 1971-1972. Therefore, the Second Land Acquisition Collector was requested to defer the land acquisition proceedings. The Chief Valuer of the Calcutta improvement Trust by another letter dated 18th November, 1974 also informed the Second Land Acquisition Collector to defer services of the notices under sections 9 and 10 of the said Act of 1894 until further communication from the Calcutta Improvement Trust. By letter dated 19th march, 1975 the Land Acquisition Collector requested the Chief Valuer to intimate its decision of the Calcutta Improvement Trust regarding acquisition and to that the Chief Valuer by his letter dated 4th April,

1975 informed the Land Acquisition Authorities that no decision had yet been taken regarding the execution of the scheme. Therefore, the Land Acquisition Authority was requested to stay the acquisition proceedings till a decision is taken to this effect. Finally, by letter dated 8th May, 1986 the Chairman of the Calcutta Improvement Trust requested the Land Acquisition Authorities to complete the land acquisition proceedings by the end of September, 1986, and also requested the authorities, concerned to issue notice under Sections 9 and 10 of the said Act of 1894. According to the learned Government Pleader the proceedings thereafter was concluded and the award was made but could not be given effect to in view of the interim order of injunction made in the present writ proceedings. The substance of the argument of the Learned Government Pleader is that there has been no delay in completing the land acquisition proceedings on the part of the land acquisition authorities as also the State.

41. It has also been submitted by the Learned Government Pleader that the State Government sanctioned the scheme u/s 48 of the C.I. Act and noticed in the Calcutta Gazette u/s 49 of the C.I. Act on 29th December, 1967.

42. It is also the submission of Learned Government Pleader that the report was prepared and submitted by the Chief Engineer of the Calcutta Improvement Trust in or about February, 1985 where from it would appear that an economically viable housing scheme was possible to be taken up on the said site and the said report also stated that the construction of 260 flats on the land will fetch 5% net profit after meeting of expenditure of the scheme.

43. With regard to the cancellation or abandonment of scheme by the Calcutta Improvement Trust, it is the submission of the Learned Government Pleader that it would appear from the resolution dated 26th March, 1985 whereby the Board of the Calcutta Improvement Trust decided to abandon and cancel the scheme and sought to state approval to such cancellation, that the said note of the Chairman dated 20th July, 1976 and the said report of the Chief Engineer dated 5th February, 1985 were not placed at all before the Board before consideration of the proposal for abandonment or cancellation of the scheme.

44. The learned Government Pleader submits that the State Government refused to accord sanction of the said proposal for cancellation of the scheme taking into consideration the said views of the Chairman contained in his notice dated 20th July, 1976 as also the report of the Chief Engineer submitted in or about February, 1985. It has been submitted by Learned Government Pleader that in spite of the above facts the petitioner got a building plan sanctioned by the Municipal Corporation although the proposal for sanction of building plan was not entertained by the Corporation on two previous occasions and in any event such sanction was ultimately accorded after taking an indemnity bond from the petitioners.

45. He submits that taking these facts into consideration it cannot be contended by the petitioners that there has been undue and unexplained delay on the part of the State respondents or that the entire object of acquisition proceedings was to peg down prices as very strenuously argued by the Learned Counsel for the petitioner. The Learned Government Pleader distinguishes the cases cited by the petitioners by contending that whether the object was to peg down the prices or not would depend on the facts of the case and there cannot be any universal rule and application. As would appear from the facts of this case there has been no evidence recorded that the respondent sought to acquire the land with the object of pegging down the prices. Further, there has been no material on record to show that the petitioners have suffered or would suffer any loss or damage in view of the delay in concluding the acquisition proceedings. The Government Pleader supports the submissions of Mr. Sengupta appearing on behalf of the Calcutta Improvement Trust that even if there is any delay the compensation contemplated in Section 23 of the Land Acquisition Act, 1894 and also the interest contemplated in Section 34 of the said Act could amply compensate the petitioners for such delay if there is any)".

46. Mr. Pradip Ghosh learned Counsel appearing for the Corporation, however, makes a very short submission and his contention is that the Calcutta Municipal Corporation has just issued a stop work notice but has not proceeded any further and the Calcutta Municipal Corporation would proceed with the stop work construction if it is found that there has been any deviation from the sanctioned plan. According to Mr. Ghosh such stop work construction can only be issued on the ground that there has been a deviation. It is true that such deviations are not being clearly indicated in the notice itself and before enforcing such impugned notice the Municipal authorities will consider what deviation had been made and if any deviation is detected, then Municipal Corporation authorities will proceed with the said impugned notice.

47. It appears to me that for the delay as pointed out by the petitioners, one organ is blaming the other. Calcutta Improvement Trust say that there has not been any delay on their part, the Land Acquisition authorities and the State say on the other hand that there has been no delay on their part and one casting the blame on the other contending that it is the other party which has caused delay in concluding the acquisition proceedings. It is not denying the fact that no steps whatever have been taken either by the Calcutta Improvement Trust or by the Land Acquisition authorities since the issuance of the notice initiating the acquisition proceedings u/s 43 of the C.I. Act, until 1986 when the land acquisition authorities were requested by the Calcutta Improvement Trust to proceed with the acquisition proceedings expeditiously and conclude the same within the reasonable time. It is, however, a fact that after being requested by the Calcutta Improvement Trust authorities in or about May, 1986 the Land Acquisition authorities issued notices u/s 9 and 10 of the Land Acquisition Act, 1894 and concluded the acquisition proceedings and finally

made the award before the petitioners have taken out this writ application. It is also true that from 1985 there has been no unreasonable delay on the part of the respondents both the State respondent as also the Calcutta Improvement Trust. But as I find, there is no explanation as to the delay that has been caused after the initiation of the Section 43 notice of the C.I. Act issued sometime in 1964 till 1986 when the Calcutta Improvement Trust authorities requested the Land Acquisition authorities to issue notices u/s 9 and 10 of the said Land Acquisition Act, 1894. It is also not in dispute that the scheme has not been put into the execution and there has been nothing on record to show that financial provisions have been provided for in implementing the said scheme, or what steps were taken by the concerned authorities to procure necessary finance for implementing the scheme. It is true also that from 1964 the Calcutta Improvement Trust has not taken any steps for putting the scheme into execution or obtaining necessary financial assistance for implementing the said scheme. It is also a fact that the Calcutta Improvement Trust deferred the implementation of the scheme from time to time and finally by a resolution dated 26th March, 1985 decided to abandon and cancel the said scheme and send its proposal to the State for necessary approval. It is, however, true that the State did not accord its sanction to the said proposal for cancellation and/or abandonment of the scheme but the fact remains that nothing has been done on the part of the Calcutta Improvement Trust to put the scheme into action and from the said note which has been relied on by the State respondent as also the Calcutta Improvement Trust that the Chairman Calcutta Improvement Trust considered it to be a viable scheme and expressed his desire to proceed with the scheme after acquiring the land in question,

48. It has submitted by Mr. Gupta the Learned Counsel for the petitioners that the entire object of this acquisition proceedings was to peg down the prices and that would be evident from the note of the said Chairman of the Calcutta Improvement Trust dated 20th July, 1976. A copy of the said letter has been set out in paragraph 4 of the supplementary affidavit filed on behalf of the respondent no. 4 and affirmed on 29th June, 1987. It has been, inter alia, stated in the said letter that "We have the advantage in that the scheme has been notified in mid 60s and hence land costs will be paid at that price at the maximum or may even be available under Urban Ceiling."

49. Mr. Gupta learned Counsel makes a reference to this particular statement of the Chairman of the Calcutta Improvement Trust to show that the entire object of this acquisition proceedings was to pay compensation at the market rate prevailing on the day of the notification dated 3rd december, 1964 and there cannot be any better evidence of pegging down the prices.

50. Now from the facts stated above, the procedure with regard to framing of scheme and publication of the substance of such scheme by a notification as contemplated in Section 43 of the C.I. Act, hearing of objection from the authority

concerned as contemplated u/s 45 of the Act and the objections from the persons who might be affected by such scheme in the manner contemplated in Section 47 of the Act and publication of the declaration regarding intention to execute the scheme u/s 49 of the Act have been duly complied with. But it will appear that all the procedures have been carried out and complied with before 1969. Since then till 1985 there has been a long gap except that certain correspondences were exchanged between the Improvement Trust on the one hand and the Land Acquisition Authority on the other and also certain correspondences exchanged between the petitioners and the Improvement Trust all indicating that the Board of the respondent no. 1 was not in a position to execute the scheme and finally took a resolution to abandon the scheme subject to approval of the State Government and it will appear that the State Government refused to accord sanction to the resolution of the Board abandoning the said improvement scheme. It will further appear from the certain correspondences exchanged between the petitioner and the Improvement Trust on the one or the correspondences exchanged between the Improvement Trust and the State Government on the other that the State Government wanted implementation of the scheme as conceived of and framed as early as 1964 and nothing further was done after the publication of the notice in terms of Section 49 of the Act. The State Government now decides and desire in 1985 that Board should execute the scheme and the Land Acquisition Authorities should be moved to expedite and conclude the acquisition proceedings forthwith. It is clear, however, that if the said acquisition proceeding is allowed to stand, then the petitioners would get the compensation for the land proposed to be acquired on the basis of the market value as prevailing in 1964 when the publication of notice u/s 43(1) was made. It will also appear from the scheme of the C. I. Act as indicated before that the provisions contained in Section 23 and other provisions of the Land Acquisition Act, 1894 as modified of the said C.I. Act will be applicable to the present acquisition proceedings being the subject matter of this writ petition. It is also the case that for the land proposed to be acquired the petitioners as owner of the land would get compensation computed in the manner indicated in Section, 23 of the Land Acquisition Act plus a solatium of 30% of the said compensation as computed u/s 23 of the Land Acquisition Act, 1894 and if the amount of such compensation as determined under. Section 23 of the Land Acquisition Act, 1894 is not paid before taking possession of the land and interest at the rate indicated in Section 34 of the Land Acquisition Act, 1894 will accrues to the amount determined as compensation from the time of taking possession until payment thereof. But it will appear from the scheme as indicated that inspite of rise in prices of the land in Calcutta from 1964 till date, the petitioners would get the compensation assuming the land is acquired in accordance with the law, at the prices ruling in 1964. In my opinion, this is nothing but pegging down the price as indicated in several decisions referred to above and cited at the bar to which I will refer presently. This object of pegging down the price is also clearly indicated in the letter dated 20th July, 1976 from the Chairman, Calcutta Improvement Trust to the Secretary Metropolitan Development

Department of the State Government. This letter or substance thereof has been disclosed by the Land Acquisition Authorities as also the Improvement Trust. I have already indicated above the gist of the letter and/or note indicating that the Government would not be looser in terms of compensation if the acquisition proceeding is pursued.

51. By a letter dated 20th July, 1976, substance of the letter has been set out in paragraph 4 of the Supplementary affidavit of one Abdulbari, Deputy Secretary to the Metropolitan Development Department of Government of West Bengal affirmed on 29th June, 1987, the Chairman of the Calcutta Improvement Trust had observed that they had the advantages in that the scheme has been notified in mid 60's and hence land costs would be paid at that price but at the maximum or may even be available under Urban Ceiling. This note of the Chairman, Calcutta Improvement Trust was forwarded to the Secretary, Metropolitan Development Department, Government of West Bengal. The Chief Engineer of the Calcutta Improvement Trust also submitted a report on the scheme to the Chief Valuer on 5th February 1985 stating that it was economically viable to have a Housing Scheme in the premises in question and requested him to place the report before the Board for approval and for issuing necessary instruction for early completion of land acquisition proceedings. By a letter dated 6th May, 1985, the Calcutta Improvement Trust informed the society that the premises in question was scheduled for acquisition in Calcutta Improvement Trust Scheme No. XI Bechulal Road, which was sanctioned by the Government and the execution of the scheme had been kept in abeyance since long. It was further stated in the said letter that the plan committee at its meeting dated 26th March, 1985 had cancelled the scheme and the Board had approved of the scheme and the Government was being moved for further necessary action.

52. Therefore, it would appear from the sequence of the events mentioned above, the notification u/s 43 of the Calcutta Improvement Act, 1911 was issued on 14th December, 1964 and published in the Calcutta Gazette on 3rd December, 1964. But by a letter dated 7th August, 1984, the Calcutta Improvement Trust informed the Society that the premises was not affected by any sanction or public scheme or alignment of the Trust at present. Again by a letter dated 16th February, 1985 the Calcutta Improvement Trust informed the Society that the premises 9B, Bechulal Road was scheduled for acquisition in the Calcutta Improvement Trust Scheme No. XI, Bechulal Road.

53. It is, however, strange that no steps have been taken by the Improvement Trust or State of West Bengal or pursuing the acquisition proceedings and to conclude the same. On the contrary, the Calcutta improvement Trust from time to time informed the land acquisition authorities that the scheme had been kept in abeyance and/or deferred.

54. The learned Counsel for the petitioners has placed heavy reliance on the decision of the Andhra Pradesh High Court reported in AIR 1981, Andhra Pradesh

Page 278, the full bench decision reported in AIR 1982 Punjab and Harayana at page 519 and also the decision of the Gujarat High Court reported in AIR 1981 Gujarat 67. The learned Counsel for the petitioners also referred to other decisions including few decisions of the Supreme Court referred to above.

55. The Andhra Pradesh High Court in AIR 1981 AP 278 has, inter alia observed :

" According to the first paragraph in Section 23(1) of the Act, the compensation payable under the Act is "market value of the land at the date of publication of the notification u/s 4 sub-section (I)." This compensation is paid only after the passing of the award. It is true that, ordinarily, possession would be taken only after the award is passed : but, in some cases, the urgency clause may be invoked, in which case possession will be taken 15 days after the expiry of the publication of the notice mentioned in Section 9(1). It is equally true that in cases where possession is not taken, the landholder continues to be in possession of the land, reaping the benefit there from; and where possession is taken before passing the award, interest is paid from that date.

But it cannot be gain said that the scheme and intendment of the Act is that the award would be passed as early as possible in the circumstances of the case. It can hardly be denied today that over the last several years there has been a substantial rise in the prices of agricultural lands, urban vacant sites and buildings. In case of major towns and cities the increase has been phenomenal. If the land acquisition authorities are allowed to issue a notification u/s 4(1), and then wait for 10 years to pass the award and pay the compensation, what is ultimately paid to the owner would hardly represent a reasonable and fair compensation. Not only the prices would have risen subsequently over the period of 10 years, but the inflation which is an equally undeniable fact - would also have taken away the value of the money ultimately awarded. It must also be noticed that the proceedings under this Act are very simple in nature. Questions of title or the disputed claims cannot be adjudicated. The price awarded by the Land Acquisition Officer is ultimately in the nature of an offer made by the State.

All that the Land Acquisition Officer has to do after the publication of the declaration u/s 6, is to prepare a statement of valuation and determine what is the reasonable price payable for the land, and then pass an award. This should not ordinarily, take such of a time. It is a different matter if the land owners themselves obstruct the proceedings, or cause delay by resorting to Courts, or by means of appeals and revisions. In such a case, having themselves caused and delay they would not be heard to complain. But where the land owners do not in any manner, contribute to the delay, the Land Acquisition Officer cannot sleep over the matter and take his own time for passing the award. The statutory power conferred upon the State by this Act, viz., the power of eminent domain, should be. exercised reasonably and fairly, which necessarily means that the award must be passed with reasonable expedition. However, if there is any statutory provision which disables the Land

Acquisition Officer from proceeding further, or from passing the award, of it there is any statutory provision which prohibits him from doing so, it would certainly constitute a valid explanation."

56. I respectfully agree with the above observation of the Andhra Pradesh High Court in the case of Appalamurthy v. State, AIR 1981 Andhra Pradesh 278. It would appear that what is essential, as observed by the Andhra Pradesh High Court in the said case, is that the award must be passed with the reasonable expedition from the time publication of the declaration u/s 6. In the present case, declaration u/s 49 of the C.I. Act corresponding to Section 6 of the Land Acquisition Act and the said publication has been made in 1968.

57. In the Punjab case, AIR 1982 P & H 519, the full bench had observed :

" If it can be established beyond cavil that the real motivation behind the acquisition was not any specific public purpose and its expeditious execution but was a ruse to peg down the prices by an issuance of notification u/s 4 and thus holding the citizens to ransom for years at the whim and caprice of the State to finalise the acquisition proceeding; when it chooses (it at all it is so done) is clearly a factor for establishing the colourable exercise of power. It must, therefore, be held that unexplained inordinate delay is certainly a starkly relevant factor, if not a conclusive one for determining the colourable exercise of power or otherwise in the context of the proceedings under the Act. It "would follow logically that where the gross delays on the part of the State are themselves the foundations for assailing the proceedings, the petitioner cannot be non-suited in the writ jurisdiction for approaching it after a long period of time from the initiation of the acquisition. It is by now elementary that the writ jurisdiction is for the vigilant and the litigant who sleeps over his rights inordinately is to be frowned upon heavily within this forum. However, it seems to be equally plain that where the cause of action itself stems wholly or in part from the allegations of unexplained delay and procrastination of the State, it can hardly lie in the mouth of the State to make a grievance thereof."

58. The Supreme Court in a decision of Ambalal v. Allahabad Municipality, reported in AIR 1968 SC 1223 has observed; -

" We are not hereby to be understood as suggesting that after issue of the notification under Sections 4 and 6 the appropriate Government would be justified in allowing the matter to drift and to take in hand the proceedings for assessment of compensation whenever they think it proper to do. It is intended by the scheme of the Act that the notification u/s 6 of the Land Acquisition Act must be followed by a proceeding for determination of compensation without any unreasonable delay."

The Gujarat High Court in AIR 1981 Gujarat 67 has observed

" If the Land Acquisition Officer or the Government, as the case may be, acted in such a leisurely and tardy manner, a person who was aggrieved by such an

acquisition, could not be called upon to act quickly and post haste where the statute does not prescribe any period of time for the exercise of a particular power, it must be exercised within a reasonable time".

59. I have no doubt in my mind that the State Government as also the Calcutta Improvement Trust are entirely responsible for the delay in the conclusion of the acquisition proceedings and further that this acquisition proceeding is now sought to be concluded or has been concluded with the sole purpose that the concerned authority wanted to require the land on the basis of the price as prevailing in 1964 when the notification u/s 43(1) of the C.I. Act was published. There could not be any more gearing instance of pegging down the price as in the present case. There is no time limit for conclusion of the acquisition proceedings in the Act but that does not mean that State Government can conclude the proceedings at any time, may be after 10 or 20 years at the whim and caprice of the State Government and without any reasonable excuse for the delay. One cannot dispute that the result of such procrastination on the part of the concerned authorities is that the person whose land has been acquired would get the compensation at the market rate prevailing on the date of the publication of Section 4 notice or as in this case section 43 notice, although by reason of such delay, the prices of the land have in the meantime shown a phenomenal increase. In my view, this is not the intendment either of the Calcutta Improvement Act, 1911 or the Land Acquisition Act, 1894. Now, of course, the Land Acquisition Act, 1894 has incorporated a new provision being Section 11A of the effect that the Collector shall make an award u/s 11 within a period of 2 years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse.

60. Therefore, it appears that the intendment of the legislature is to conclude the acquisition proceedings within a reasonable time from the date of initiation of the acquisition proceedings, so that the person whose land has been acquired is not made to suffer for the inordinate delay in concluding the proceedings on the part of the acquisition authorities.

61. It will also appear from the facts, narrated above, that there has been no satisfactory explanation either from the respondent no. I, the Calcutta Improvement Trust, or the respondent no.4, the Land Acquisition Authorities about the delay that has occurred in proceedings. It has been urged on behalf of the respondents both the Calcutta Improvement Trust and the State that in this writ petition, the petitioners have not challenged the notification issued u/s 43(1) of the C.I. Act or the declaration u/s 49 of the Act and by not challenging the validity thereof the petitioners should not be allowed to challenge the acquisition proceedings on the ground of delay, if there is any, on the part of the acquisition authorities. In my opinion, there is no substance at all in the aforesaid contention of the respondents. In the words of Punjab High Court to which I respectfully agree that where the cause of action itself stems wholly or in part from the allegations of unexplained

delay and procrastination of the State, it can hardly lie in the mouth of the State to make a grievance thereof. It is true that delay is one of the factors to be considered in entertaining the application under Article 226 of the Constitution but that should not leave the Court to conclude, if there is any unreasonable and unexplained delay on the part of the acquisition authorities and paying the compensation at the rate prevailing say 15 or 20 years back, that the Court cannot give necessary relief to the petitioner. As observed by the Punjab High Court, to which I respectfully agree, the cause of action here springing from the inordinate delay on the part of the State Government and this point of delay on the part of the petitioner in not challenging the initiation notice or the declaration within a reasonable time or at all should not be a ground for refusing the relief asked for by the petitioner.

62. I am also of the opinion that even if the initiation of acquisition is not challenged, the petitioner is well within its right to challenge the acquisition proceedings on any tenable ground including the long and inordinate delay on the part of the acquisition authorities in concluding the acquisition proceedings, resulting in loss of reasonable and fair compensation for the land sought to be acquired by the acquisition authorities, Therefore, the aforesaid contention of the respondents that no relief should be granted to the petitioners on account of delay also on the part of the petitioners in challenging the initiation proceedings or the declaration is entirely rejected. For the reasons aforesaid, this writ application succeeds. The rule is made absolute. The entire acquisition proceedings including the award thereof is set aside. This order would not, however, prevent the respondent authorities from issuing notifications afresh for acquiring the land concerned in accordance with law. The petitioner is also entitled to cost of the application.

Probir Kumar Majumdar, J.