

(2008) 12 CAL CK 0023

Calcutta High Court

Case No: F.M.A. No. 1303 of 2008 with C.O.T. 45 of 2008

National Highways Authority of
India

APPELLANT

Vs

Additional District Magistrate
(Land Acquisition and
Competent Authority) and
Others

RESPONDENT

Date of Decision: Dec. 24, 2008

Acts Referred:

- Constitution of India, 1950 - Article 12, 14, 300A
- National Highways Act, 1956 - Section 3, 3A, 3B, 3C, 3D

Citation: (2009) 2 CALLT 23

Hon'ble Judges: Tapan Mukherjee, J; Pranab Kumar Chattopadhyay, J

Bench: Division Bench

Advocate: Pratap Chatterjee, D. Basak, Aniruddha Roy, D.N. Sharma and R.K. Rai, for the Appellant; Kalyan Bandyopadhyay, Probal Mukherjee and Subir Pal, for the Respondent

Final Decision: Allowed

Judgement

Tapan Mukherjee, J.

This appeal at the instance of the writ petitioner is directed against the judgment and order of dismissal passed by the Learned Single Judge in W.P. No. 15635 (W) of 2004.

2. The writ petition was disposed of by Learned Single Judge by dividing success between the petitioner and the respondent No. 4 - in other words deciding main issue of maintainability in favour of the petitioner and passing ultimate order of dismissal in favour of the respondent No. 4 on equitable consideration.

3. The petitioner came up with the case that respondent No. 4 had constructed shopping complex on plots No. 1372, 1373, 4603 and 4604 of Mouja - Galsi, District-

Burdwan. The National Highway Authority of India in short NHAI is owner of plot Nos. 1372 and 1373. The respondent No. 4 encroached upon a portion of the said plots for constructing the shopping complex. In the process of widening National Highways No. 2 the NHAI threatened demolition of the said shopping complex to the extent it encroached the land owned by the said NHAI.

4. Being aggrieved thereby the respondent No. 4 moved a writ application being No. 19113(W) of 2001 which was disposed of on 18.12.2001 directing the Additional District Magistrate (Land Acquisition), Burdwan to make spot enquiry in respect of the land which was occupied by the structure erected by the petitioner and also to ascertain whether there was any encroachment of the land by the petitioner and if any such encroachment was found the authorities was at liberty to pass order for demolition of the same. The ADM (LA) was directed to submit report by 15.1.2002. Then the ADM (LA) made a spot enquiry and by order dated 19.3.2002 held that the respondent No. 4 had encroached plot Nos. 1372 and 1373 and gave NHAI liberty to approach the appropriate authority for obtaining an order of demolition. The said order dated 19.3.2002 was challenged by the respondent No. 4 in W.P. No. 5792(W) of 2002 which was dismissed on 20.8.2002. The appeal against that order was also dismissed. Then a process was initiated for demolition of the encroached portion and the shopping complex on the encroached portion was demolished on 7.9.2002. The respondent No. 4, thereafter, lodged a complaint before the District Magistrate, Burdwan alleging demolition of authorised portion of the shopping complex standing on plot Nos. 4603 and 4604. The District Magistrate after various correspondences referred the issue to the Additional District Magistrate (Land Acquisition), Burdwan for decision. The ADM(LA) conducted further spot enquiry. NHAI abstained on the ground that inter court appeal referred to above was pending on the date. So on hearing the respondent No. 4 and on spot enquiry the ADM(LA) came to a conclusion that NHAI had demolished part of the shopping complex which was authorised having been constructed on plot Nos. 4603 and 4604. He passed an order against the NHAI to pay compensation of Rs. 22,48,464/- in favour of respondent No. 4. Being aggrieved by the said order of the ADM(LA) the NHAI filed the instant writ petition being WP No. 15635(W) of 2004 challenging jurisdiction of ADM(LA) to order compensation in favour of respondent No. 4 invoking the provision of National Highways Act. During pendency of the writ petition the respondent No. 4 was given leave to file supplementary affidavit. On 28.4.2008 the writ petition was dismissed by the Learned Single Judge after holding that ADM(LA) had no authority and competence to determine compensation payable to respondent No. 4 and the order passed by ADM(LA) was indefensible. The Learned Single Judge while dismissing the writ petition on equitable consideration affirmed the impugned order of the ADM(LA) in respect of awarding compensation in favour of respondent No. 4 and allowing interest till payment. Being aggrieved by the aforesaid judgment and order of dismissal of the writ petition instant appeal has been preferred at the instance of the writ petitioner.

5. The respondent No. 4 also has filed the cross-objection being COT No. 45 of 2008 assailing the finding of the Learned Single Judge that ADM(LA) had no jurisdiction and competence to determine compensation payable to the respondent No. 4 and order passed by the ADM(LA) was indefensible.

6. Mr. Pratap Chatterjee, learned senior counsel appearing for the appellant has supported that part of the order of the Learned Single Judge wherein it was held that the order of the ADM(LA) was indefensible but challenged the order of the Learned Single Judge passed in the name of equity whereby the appellant has been directed to act in the same manner as in the case of Rakshit in order to avoid double standard. Learned senior counsel has contended that learned Single Judge having held that the respondent No. 4 had acted without jurisdiction the question of directing the appellant to pay compensation as assessed by ADM(LA) to respondent No. 4 did not arise. When the Learned Single Judge had found the ADM(LA) to exercise power without jurisdiction the impugned order of Learned Single Judge is a nullity. Learned Single Judge should have allowed the writ petition.

7. Learned senior counsel, Mr. Chatterjee has further contended that in conflict between law and equity law prevails over equity. Mr. Chatterjee submits that learned Single Judge had erred in proceeding to grant relief following equity when the said learned Judge found the law to be against the private respondent No. 4. In law ADM(LA) is not a competent authority under the National Highways Act 1956 in so far as plot No. 4603 and 4604 are concerned inasmuch as such plots were not required by NHAI and those were not acquired. ADM(LA) had no jurisdiction to invoke National Highways Act in respect of those two plots of land.

8. Learned senior counsel, Mr. Chatterjee has further contended that the ADM(LA) is not vested with jurisdiction to determine compensation in respect of plot Nos. 4603 and 4604 under the Act and the question of clothing him with jurisdiction which he does not have cannot arise. No conduct of the appellant or consent if any on the previous occasion can be construed to have clothed ADM(LA) with jurisdiction which admittedly he did not have any.

9. It has been contended further by learned senior counsel, Mr. Chatterjee that the ADM(LA) not having any jurisdiction in the first place, it is immaterial whether NHAI questioned his jurisdiction at any point of time. The entire proceeding by the ADM(LA) is void ab initio. Consent cannot vest an authority with jurisdiction when an authority acted under a statute does not have jurisdiction.

10. Mr. Chatterjee has argued that Section 3(g) of the National Highways Act is to be read in the context of the entirety of the Act. All sub-sections of Section 3 of the National Highways Act have been incorporated for the purpose of facilitating an easier method of acquisition of land for the purpose of National Highways. The respondent No. 4 claimed ownership in respect of four plots of land, out of which two plots of land being Nos. 1372 and 1373 were found to be encroachment of

National Highways 2 and the structures thereon were required to be demolished. The respondent No. 4 had challenged the order of the ADM(LA) before the Hon'ble Court and lost. The respondent No. 4 was well aware that he was required to remove the existing structures on these two plots of land and he chose not to do so. The other two plots of land are C.S. Nos. 4603 and 4604. Section 3(g) comes into operation where any land is acquired under the National Highways Act, 1956. Then compensation is payable as determined by the competent authority u/s 3(g)(1) of the National Highways Act. Competent authority is defined in Section 3(a) and such competent authority is to be read in context of Section 3(g)(1). A competent authority comes into operation only if a land is acquired for the purpose of national highways. In the instant case C.S. Nos. 4603 and 4604 were not acquired for the purpose of National Highways.

11. Learned senior counsel, Mr. Chatterjee has further contended that the learned Trial Judge rightly appreciated that ADM(LA) had no authority and competence to determine compensation payable to the respondent No. 4 and the said ADM(LA) could not have exercised powers u/s 3G of the National Highways Act, 1956 to determine the compensation payable by NHAI to the respondent No. 4 and the order of compensation was indefensible. But the learned Trial Judge certainly fell in error in giving preference to equity in case of conflict between law and equity and erroneously held referring to the Rakshit's case that the appellant cannot take double standard and thus directed the writ petitioner appellant to pay compensation which according to the appellant cannot stand. It is also submitted by Mr. Chatterjee that by the said order an authority was created by Learned Single Judge to adjudicate compensation which has no sanction of law. Learned senior counsel Mr. Chatterjee has further contended that in Rakshit's case the land in question was required by NHAI. Such land was therefore purchased from the private party without recourse to the provisions of the National Highways Act, 1956. In such proceedings the expertise of ADM(LA) in computing and vetting the compensation payable to the private party was used. NHAI never requested ADM(LA) to exercise powers as a competent authority under NH Act and ADM(LA) also did not exercise power as a competent authority under N.H. Act. In this case the plots of land of the private respondent are not required by the NHAI.

12. Learned senior counsel has further contended that private respondent would not suffer any prejudice even the writ petition is allowed. Learned senior counsel has contended further that that the rule of estoppel does not arise in the present case.

13. Learned senior counsel of the appellant has contended that the respondent has made out a new case by filing supplementary affidavit and making out a new case in such a fashion has been deprecated by the Division Bench in the case being F.M.A. No. 435 of 2003 between Jessop & Company Ltd. Staff Association v. Jessop Mazdoor Union and Ors.. Learned senior counsel has also placed his reliance upon the

decisions reported in [The United Commercial Bank Ltd. Vs. Their Workmen, Raghunath Rai Bareja and Another Vs. Punjab National Bank and Others, , S. Sethuraman Vs. R. Venkataraman and Others, , Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others, \) , R.S. Nayak Vs. A.R. Antulay, .](#)

14. Shri Bandyopadhyay, learned senior counsel for the respondent No. 4 has supported order of Learned Single Judge dismissing the writ petition and assailed the finding of Learned Single Judge that writ petition is maintainable and order of ADM(LA) is indefensible on the basis of cross-objection filed by the respondent No. 4 against such finding.

15. Shri Bandyopadhyay has contended that on 18.12.2001 respondent No. 4 moved writ petition before the Hon"ble Court challenging the threat of demolition of his complex situated at plot Nos. 4603 and 4604 and the writ petition was disposed of on 18.12.2001 directing ADM(LA), Burdwan to make a spot enquiry in respect of land which is occupied by the structure erected by the petitioner and to find out whether there is any encroachment of the land by the petitioner and empowering the concerned authority to pass order of demolition of the same.

16. On 19.3.2002 the ADM(LA) held that construction had encroached upon the sidelines of G.T.Road in bata plot Nos. 1372 and 1373 and gave National Highways Authority to approach the appropriate authority to get an order of demolition. Respondent No. 4 challenged the said order by filing the writ petition No. W.P. 5792(W) of 2002. The writ petition was dismissed on 20.8.2002.

17. On 11.9.2002 the respondent No. 4 made an application before ADM(LA) for payment of compensation of Rs. 56,00,000/- and more above for causing damage by demolishing Santosh Shopping Centre by the appellant on 7.9.2002. The respondent No. 4 also lodged a complaint before the District Magistrate and Collector on 2.11.2002 pointing out that the building situated on plot Nos. 4603 and 4604 was demolished by National Highways Authority while taking possession of the building situated at plot Nos. 1372 and 1373. Respondent No. 4 demanded spot enquiry and payment of compensation. On 16.7.2004/2.8.2004, the order impugned in the writ petition was passed by the ADM(LA).

18. Mr. Bandopadhyay in the premises contended that the factual matrix of the instant case clearly indicates that while taking possession of their land situated at plot Nos. 1372 and 1373 the appellant demolished the building of respondent No. 4 which was situated on plot Nos. 4603 and 4604.

19. The ADM(LA) observed that it is crystal clear that NHAI, Durgapur demolished the "Santosh Shopping Centre". The direct demolition of the building on plot No. 4603 is visible. The demolition was intended to plot Nos. 1372 and 1373 but it actually extended to plot No. 4603 and it also affected the portion of the building situated in plot No. 4604. Learned senior counsel for the respondent No. 4 Mr.

Bandyopadhyay has further contended that Section 3G of the National Highways Act, 1956 makes the provision for determination of amount payable as compensation. Section 3G(7) gives power to the competent authority to pay compensation for the damages, if any, sustained by the person interested at the time of taking possession of the land, by reason of acquisition injuriously affecting his other immovable properties in any manner or his earnings. Section 3G(7)(c) of the National Highways Act, 1956 makes it very clear that if any damage is caused by reason of the acquisition injuriously affecting other immovable properties or earnings in any manner, the person affected is entitled to get the compensation and the competent authority has jurisdiction to decide the amount of compensation. Under the National Highways Act, 1956 the competent authority is the ADM(LA).

20. Learned senior counsel, Mr. Bandyopadhyay has further contended that since the writ petitioner/appellant, while taking the possession of the land situated at plot Nos. 1372 and 1373, damaged the properties of the respondent No. 4 situated at plot Nos. 4603 and 4604 and therefore the said respondent No. 4 is entitled to get compensation in terms of the provision of Section 3G(7) of the National Highways Act, 1956. He has further contended that according to the Webster Dictionary, "acquisition" means "the act of acquiring". According to the said dictionary "acquire" means - (i) "to get as one's own"; (ii) "to come into possession or control of findings by unspecified means".

21. The appellant was getting his possession back in plot Nos. 1372 and 1373. Such act of getting the possession itself is an act of acquiring and, therefore, the writ petitioner/appellant is liable to pay compensation to the respondent No. 4 by reason of the fact that the writ petitioner/appellant damaged the building of the respondent No. 4 situated on plot Nos. 4603 and 4604.

22. Mr. Bandyopadhyay further contended that the object of the National Highways Act, 1956 is two-fold. One is to acquire the land where it is needed for public purpose and secondly, to pay compensation for acquisition of land and damage, if any, sustained by the persons interested at the time of taking possession of the land by reason of the acquisition injuriously affecting other immovable properties. The object of the Act is to provide compensation to the affected persons, who has suffered by reason of any acquisition. Since "to get back possession" is also an act of acquisition the writ petitioner/appellant is liable to pay compensation to the respondent No. 4 by reason of causing damage to the private property of the respondent No. 4 at the time of taking possession of the land situated at plot Nos. 1372 and 1373. Mr. Bandyopadhyay submits that the scheme of the Act itself makes it clear that for acquisition of land and for taking possession of the land by the National Highways Authority, if anyone has been affected, he should be given compensation. The scheme of the Act and the provisions of the Act have to be considered liberally as the scheme of N.H. Act is a beneficial legislation. A construction of the Act has to be made for the benefits of the affected persons.

23. Mr. Bandyopadhyay has further contended that the scheme of the Act, more particularly Section 3G of the said Act needs a liberal construction by this Hon"ble Court. According to Mr. Bandopadhyay, constitutional right of the petitioner as protected under Articles 14 and 300A of the Constitution of India would be upheld if this Hon"ble Court gives a liberal construction to Section 3G of the said Act. It has also been urged by the said learned Counsel that no answer has been given by the writ petitioner/appellant for causing damage to plot Nos. 4603 and 4604 and only the question has been raised in the writ petition, whether the ADM(LA) is having jurisdiction to decide compensation in favour of the respondent No. 4 or not.

24. Mr. Bandyopadhyay, learned senior counsel contended that the writ petitioner/appellant never raised any question of jurisdiction before the ADM(LA) before filing of the Writ Petition. Only stand was taken by the writ petitioner/appellant before the authority was that since the matter was sub-judice, the ADM(LA) would not proceed, although such stand has no bearing at all with the question involved before the ADM(LA) in the instant matter. Earlier Writ Petition has no relevancy at all with the issues raised before the ADM(LA) as well as before this Hon"ble Court in the present Writ Petition. It is also contended by Mr. Bandyopadhyay that the Act does not authorize even the ADM(LA) to decide that whether the land situated at plot Nos. 1373 and 1373 was encroached by the respondent No. 4 but this Hon"ble Court in its order dated 18th December, 2001 directed the ADM(LA) to decide the question and the same was accepted by the writ petitioner/appellant. Mr. Bandyopadhyay submits that once it was accepted by the writ petitioner/appellant in terms of the order dated 18th December 2001 passed by this Hon"ble Court, it is too late for the writ petitioner/appellant to raise the question of jurisdiction in the present Writ Petition.

25. Learned senior counsel for the respondent No. 4, Mr. Bandyopadhyay has further contended that the respondent No. 4 used a supplementary affidavit before this Hon"ble Court. It would be evident from the Supplementary Affidavit affirmed on 31st August, 2007 that the Hon"ble Justice Amitava Lala (As His Lordship then was) in W.P. No. 1836(W) of 2003, directed the authorities to consider the representation of the writ petitioner Shri Sankar Prasad Rakshit therein in granting compensation. In the said writ petition being W.P. No. 1836(W) of 2003, the writ petitioner therein complained that on 23rd June, 2002 in the morning the National Highways Authority demolished the building of the writ petitioner in a land which were not the land of the National Highways Authority. It was also complained in the said writ petition that the National Highways Authority did not initiate any acquisition proceeding in respect of the said plot of land.

26. Mr. Bandyopadhyay further contended that it would be evident that the National Highways Authority awarded compensation in terms of the provisions of Section 3G(7) of the said Act of 1956 to the writ petitioner of the W.P. No. 1836 (W) of 2003. It would be evident that the National Highways Authority admitted that in terms of the

order of the Hon"ble Justice Amitava Lala (As His Lordship then was), the matter was referred to the District Magistrate for determination of the absolute ownership of the said plot of land and it was determined by the Additional District Magistrate (Development) vide his letter dated 1st December, 2003 that the writ petitioner in the said writ petition being W.P. No. 1836(W) of 2003, was the absolute owner of the said plot of land and the compensation was determined by the said Additional District Magistrate (Land Acquisition and Competent Authority) as per Section 3G(7) of the National Highways Act, 1956. In terms of such determination made by the Additional District Magistrate (Land Acquisition and Competent Authority) under the provisions of Section 3G(7) of the National Highways Act, 1956, compensation was paid by the National Highways Authority of India to the writ petitioner and later on the National Highways Authority purchased the land.

27. Mr. Bandyopadhyay has argued that in the said matter, the National Highways Authority has accepted that the Additional District Magistrate (Land Acquisition and Competent Authority) had the authority and/or jurisdiction to determine the compensation for damaging the property u/s 3G(7), where the land was not acquired by the National Highways Authority under the provisions of the National Highways Act, 1956. The order of the Hon"ble Justice Amitava Lala (As His Lordship then was) directing the Competent Authority to decide the amount of compensation passed in that case was accepted by the present writ petitioner/appellant and accordingly compensation was paid. Once the power of the Competent Authority has been accepted by the writ/petitioner/appellant in another writ proceeding, the same cannot be questioned by the writ petitioner/appellant in the present writ petition as well as in the appeal. Mr. Bandyopadhyay, learned senior counsel has further contended relying on the decision of Apex Court in the case of Union of India and Ors. v. Kumudini Narayan Dalal and Anr. reported in (2001) 10 SCC 231 that in view of the aforesaid judgment, once the writ petitioner/appellant accepted the jurisdiction of the respondent No. 1 to determine the compensation u/s 3G(7) in case of the said Writ Petition being W.P. No. 1836(W) of 2003, the said writ petitioner/appellant cannot challenge the decision of the respondent No. 1 in the present writ petition as well as in the appeal on the ground of jurisdiction.

28. Learned senior counsel, Mr. Bandyopadhyay has further contended that it would be evident from the factual matrix of the case that the writ petitioner/appellant did not raise any question of jurisdiction before the respondent No. 1 and on the contrary it was said all throughout that since the matter was sub-judice, the respondent No. 1 should not proceed with the matter. According to Mr. Bandyopadhyay it would also be evident that the writ petitioner/appellant accepted the power of the respondent No. 1 u/s 3G(7) in W.P. No. 1836(W) of 2003, where land was not acquired under the said Act and building situated in the said land was illegally demolished by the said writ petitioner/appellant. Mr. Bandyopadhyay submits that in that view of the matter the writ petitioner/appellant is estopped from taking the plea of jurisdiction of the respondent No. 1 to determine the

amount of compensation. The respondent No. 1 being the Competent Authority acted under the provisions of the National Highways Act, 1956. Mr. Bandyopadhyay has relied on a decision of this Court in the case of *Purba Lama v. The State of West Bengal and Ors.* reported in 1997 2 CHN 98.

29. Learned senior counsel Mr. Bandyopadhyay has further contended that the writ petitioner/appellant is also a Public Sector Undertaking and "State" within the meaning of Article 12 of the Constitution of India. Relying on the decision of the Hon"ble Supreme Court in the case of [Mahanagar Telephone Nigam Ltd. Vs. Chairman, Central Board, Direct Taxes and Another](#), and also in *Chief Conservator of Forests*" case reported in [Chief Conservator of Forests, Govt. of A.P. Vs. The Collector and Others](#), Mr. Bandyopadhyay contended that it was not contemplated by the framers of the Constitution or the CPC that two Departments of a State or Union of India and/or Department of the Government and the Public Sector Undertakings would fight a litigation in a Court of Law and such a course is detrimental to public interest as it entails avoidable wastage of public money and time. These are all limbs of the Government and must act in coordination and not in confrontation. In view of the aforesaid judgments, the writ petition as also the appeal are not maintainable since the same are against the public interest. Mr. Bandyopadhyay has further argued that from the facts as disclosed in the Affidavit-in-Opposition and the Supplementary Affidavits filed by the respondent No. 4 herein, it is abundantly clear that the writ petitioner/appellant has not come up with clean hands before this Hon"ble Court. The writ petitioner/appellant is trying to take shelter of technicalities of law after doing illegal activities. According to the learned Senior counsel of the respondent No. 4, there is no answer by the writ petitioner/appellant under what provisions of law the property of the respondent No. 4 can be demolished by the writ petitioner/appellant. Mr. Bandyopadhyay urged before this Court that simply because of violation of any provision of law, this Hon"ble Court may not be pleased to interfere in the writ petition as well as the appeal specially when the writ petitioner/appellant has not suffered any loss by reason of the acts of the respondent No. 4 whereas the said respondent No. 4 has suffered loss and prejudice. The rights of the respondent No. 4 as protected under Article 300A of the Constitution of India have been violated by the writ petitioner/appellant according to the said learned Counsel.

30. Mr. Bandyopadhyay has submitted that the learned Single Judge erred in law in accepting the submission of the learned Counsel appearing on behalf of the writ petitioner/appellant as the first respondent could not have exercised power u/s 3G of the National Highways Act, 1956 to determine the amount of compensation payable by National Highways Authority to the fourth respondent inasmuch as the object of the Act is to provide compensation to the affected person who have suffered by reason of any acquisition and since "To get back possession" is also an act of acquisition and thereafter the Additional District Magistrate (Land Acquisition) had the authority to decide compensation in the present case.

31. Mr. Bandyopadhyay has further contended that learned Single Judge erred in law in reaching a finding to the extent that unless act of acquisition was undertaken in terms of provisions contained in Sections 3A to 3F of the National Highways Act, 1956 the Additional District Magistrate (Land Acquisition) had no authority to decide u/s 3G(7) since the object of the National Highways Act is two fold; one is to acquire the land and secondly to pay compensation for acquisition of land and damage, if any, sustained by the persons interested at the time of taking possession of the land by reason of acquisition injuriously affecting his other immovable properties. Mr. Bandyopadhyay has contended that the Learned Single Judge erred in law by not considering that the National Highways Act is a beneficial legislation in so far as the affected persons are concerned and Learned Single Judge has given narrow interpretation of the word "acquisition" employed in the said Act.

32. According to Mr. Bandyopadhyay, the Learned Single Judge ought to have given wide interpretation of the said word by reason of the fact that the National Highways Act is a beneficial legislation for the purpose of awarding compensation to the person who has suffered a damage by reason of taking possession of their own land by National Highways Authority. The scheme of the Act itself makes it clear that for acquisition of land and for taking possession of the land by the National Highways Authority, if anyone has been affected he should be given compensation.

33. Learned senior counsel Mr. Bandyopadhyay has further contended that the Learned Single Judge ought to have held that the writ petitioner/appellant was estopped from raising the question regarding the jurisdiction of Additional District Magistrate (Land Acquisition) by reason of the fact that the writ petitioner/appellant submitted to his jurisdiction. Mr. Bandyopadhyay has also contended that Learned Single Judge erred in law in not holding that the writ petition is not maintainable in view of the two Hon'ble Supreme Court judgements reported in AIR 2003 SC 1805 and AIR 2004 SC 2434. Learned senior counsel, Mr. Bandyopadhyay has submitted that the Learned Single Judge erred in law in not awarding compensatory cost against the respondent authorities.

34. Learned senior counsel also placed reliance upon the decisions reported in AIR 2006 SC 1489, 2005(3) SCC at page 551, 2003(4) SCC 27, 2006(5) SCC at page 745, 2001(10) SCC at page 231 and 1997(2) CHN at page 98.

35. It is undisputed that the fourth respondent constructed a shopping complex on plots bearing No. 1372, 1373, 4603 and 4604.

36. It is true that it was alleged by the appellant/writ petitioner that the respondent No. 4 constructed a shopping complex on plot Nos. 1372, 1373, 4603 and 4604. It was further alleged that the respondent No. 4 encroached on a portion of plot Nos. 1372 to 1373 belonging to National Highways Authority of India for constructing the shopping complex. The NHAI threatened demolition of said shopping complex to the extent it encroached the same. It is undisputed that the plot Nos. 1372 and 1373

belong to the National Highways Authority and plot Nos. 4603 and 4604 belong to respondent No. 4. It is undisputed that the respondent No. 4 filed a writ application being No. AST. 1879 of 2001 which was disposed of on 18.12.2001 by directing the ADM(LA) to make a spot enquiry in respect of the land which was occupied by the structure erected by the respondent No. 4. The Additional District Magistrate (Land Acquisition) was further directed to find out whether there was any encroachment of land by the petitioner and if any such encroachment was found, the authorities would be at liberty to pass orders for demolition of the same. The ADM(LA) was directed to submit report after making the spot enquiry. ADM(LA) conducted spot enquiry in terms of the said order and held that respondent No. 4 had encroached on plot Nos. 1372, 1373 and NHAJ was granted liberty to approach the appropriate authority for obtaining an order of demolition. The said order was challenged in writ petition being No. W.P.5792(W) of 2002 which was dismissed by Learned Single Judge and in the appeal arising out of the said order being MAT 2819 of 2002 (FMA. 3075 of 2002) was also dismissed. Then a process was initiated by NHAJ for demolition of encroachment on plot Nos. 1372, 1373 and a shopping complex on the encroached portion was demolished on 7.9.2002. Then respondent No. 4 lodged a complaint before the District Magistrate and Collector, Burdwan alleging that in the process of demolishing the shopping complex on the encroached portion the NHAJ had caused demolition or even the authorised portion of the shopping complex standing on plot Nos. 4603 and 4604. The District Magistrate referred the issue to the ADM(LA) for decision. NHAJ abstained on the ground that the appeal being No. MAT 2819 of 2002 was pending. However, ADM(LA) held that NHAJ had demolished different portions of the shopping complex on plot Nos. 4603 and 4604 of the respondent No. 4 and passed an order on 16.7.2004/2.8.2004 for payment of compensation to the tune of Rs. 22, 48, 466/- by the NHAJ to the respondent No. 4 taking recourse to Section 3G(7)(b)(c)(d) of the land, by 1956. That order has been challenged by the NHAJ in the writ petition on the ground that the ADM(LA) had no jurisdiction to decide the issue and award compensation to the fourth respondent as the said lands appertaining to plot Nos. 4603, 4604 were not acquired by NHAJ under the Act and in determining compensation ADM(LA) has exercised the power which he did not possess.

37. As already observed learned senior counsel for the appellant Mr. Chatterjee has contended that the order of the ADM(LA) awarding compensation is contrary to law and he had no jurisdiction under the Act to pass such order and such order is void ab initio. To the contrary learned senior counsel for the respondent No. 4, Mr. Bandyopadhyay has supported the order awarding compensation taking recourse to the provision of Section 3(G)(7) of the N.H. Act.

38. Now the moot question is whether the said order of ADM(LA) against the appellant/writ petitioner awarding compensation to the respondent No. 4 is sustainable in terms of the provision of National Highways Authority Act and whether the NHAJ is obliged to pay compensation in terms of the said order. In

order to decide the said question it is necessary to go through the relevant provisions of the National Highways Authority of India Act, 1956 as amended in 1997. 3A of NH Act enables the Central Government to declare its intention to acquire land by notification while it is satisfied that for a public purpose any land is required for the building, maintenance, management or operation of a national highway or part thereof.

39. Then Section 3B relating to power to enter for survey etc comes to play. Section 3C of the Act deals with the matter of hearing of objections. u/s 3D the Central Government shall declare, by notification in the Official Gazette, that the land should be acquired for the purpose or purposes mentioned in Sub-section (1) of Section 3A and land shall vest absolutely in the Central Government free from all encumbrances.

40. Section 3E enables the Central Government to take possession of such land. u/s 3G the competent authority has been given the power to determine the amount payable as compensation.

41. Section 3G(7) provides that the competent authority while determining the amount under Sub-section (1) or Sub-section (5), shall take following matter into consideration:

- (a) the market value of the land on the date of publication of the notification u/s 3A;
- (b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;
- (c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;
- (d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.

42. So, it is crystal clear that the question of determination of amount payable as compensation under the National Highways Act will arise when the land is acquired under the provision of the National Highways Act. The question of application of Sub-section 7 of Section 3G will come when the question of determination of amount payable as compensation under 3G of the Act will arise after the land is acquired under the Act. The provision of Section 3G or Sub-section 7 of Section 3G of the Act cannot be read in isolation disregarding the provisions relating to the acquisition of the land under the Act. If a land is not acquired under the National Highways Act the provision of Section 3G or Section 3G(7) does not come to play.

43. In this case, there is no notification u/s 3A for acquisition of the land of the respondent No. 4. To the contrary, the NHA had no intention to acquire land of the

respondent No. 4 appertaining to plot Nos. 4603 to 4604. When there is no intention to acquire such land and no acquisition of said land under the provisions of N.H.Act the question of determination of amount payable as compensation u/s 3G of the Act by the competent authority does not arise. The NHAI wanted to free its land appertaining to plot Nos. 1372 and 1373 from the encroachment caused by the shopping complex constructed on plot Nos. 4603 and 4604 encroaching on same portion of plot Nos. 1372 and 1373. It never wanted to acquire any portion of plot Nos. 4603, 4604 under the Act for the purpose mentioned in Section 3A of the Act and so NHAI threatened demolition of the said shopping complex to the extent it encroached its land. By the order dated 18.12.2001 passed in AST. 1879 of 2001 the Additional District Magistrate (Land Acquisition) was authorised to find out whether there is any encroachment of land by the concerned writ petitioner and the authorities were given liberty to pass order for demolition of the same. Process for demolition was initiated by NHAI and shopping complex on the encroached portion was demolished on 7.9.2002. After that the respondent No. 4 lodged complaint before the District Magistrate and Collector, Burdwan alleging demolition of the authorised portion of the shopping complex standing on plot Nos. 4603 and 4604 and the District Magistrate referred the matter to the ADM(LA) for a decision and ADM(LA) found that NHAI demolished the part of the shopping complex which was authorised having been constructed on plot Nos. 4603 and 4604 and awarded compensation by the impugned order. It has been contended that the said compensation has been determined in terms of Section 3G(7) of the Act by the ADM(LA). As there was no question of acquisition of any portion of land appertaining to plot Nos. 4603 and 4604 belonging to respondent No. 4 in terms of provisions of National Highways Act, the question of determination of compensation having regard to the matters embodied in Sub-section 7 of Section 3G of the NH Act cannot arise. The order of ADM(LA) cannot be regarded as the order u/s 3G of the NH Act. When there was no acquisition of any portion of land of respondent No. 4 under the National Highways Act the question of determination of compensation by ADM(LA) by invoking the provision of Section 3G of the Act does not arise. The ADM(LA) obviously had no jurisdiction to pass such order awarding compensation to the respondent No. 4 and Learned Single Judge rightly held that the order passed by the first respondent ADM(LA) appears to be indefensible.

44. We are quite in agreement with the observation of the Learned Single Judge that the Additional District Magistrate (Land Acquisition) was directed by the District Magistrate, Burdwan to assess compensation for damage caused by NHAI while removing encroachment not in the capacity of competent authority authorised by the Central Government under N.H.Act to determine compensation but in the capacity of the office he holds in the Collectorate of Burdwan and the letters issued by NHAI in connection with the proceeding initiated by ADM(LA) addressing ADM(LA) as competent authority would not confer jurisdiction on the said ADM(LA) to discharge functions of competent authority.

45. Mr. Chatterjee, learned senior counsel for the appellant has rightly contended that the learned Judge having held that respondent No. 4 had acted without jurisdiction, the question of directing appellant to pay compensation as assessed by the ADM(LA) to respondent No. 4 did not arise. Once the Learned Judge found the ADM(LA) to exercise power without jurisdiction, the impugned order is a nullity. Learned Single Judge after holding that the ADM(LA) had no jurisdiction to assess compensation as there was no acquisition of land in terms of National Highways Authority Act and his order awarding compensation is indefensible and finding that the writ petition is maintainable overruling the objection of learned senior counsel for the respondent No. 4 Sri Bandyopadhyay, considered the contention of the respondent No. 4 in the supplementary affidavit introducing new case long after filing writ application. The contention of the respondent No. 4 is that in writ petition being W.P. No. 1836(W) of 2003 filed by one Sankar Prasad Rakshit for compensation against the present appellant for demolishing his house and also for the damage for the articles lost and stolen during period of demolition of the house Hon"ble Mr. Justice Amitava Lala passed an order on 17.3.2003 to consider representation of the petitioner Sri Rakshit for compensation and to give compensation. In terms of the said order the Additional District Magistrate (LA), Burdwan was approached and compensation was determined u/s 3G(7) of the National Highways Authority Act irrespective of the fact that no formal acquisition proceeding was undertaken. Thus the National Highways Authority submitted to the jurisdiction of ADM(LA) and availed itself of the benefit accrued by virtue of order of ADM(LA) and now in this case also the appellant submitted to the jurisdiction of a competent authority and participated in the proceedings and accordingly, the appellant is estopped from raising the plea that the competent authority lacks jurisdiction to determine compensation in accordance with the Section 3G of the National Highways Authority Act 1956.

46. The said new case regarding payment of compensation in the Rakshit's case by the appellant/respondent and the order which was passed in the year 2004 and also the plea of estoppel were embodied for the first time in the supplementary affidavit dated 31.7.2007. There was no attempt on the part of the respondent No. 4 to amend the original writ petition.

47. Similar matter of making out a new case by filing supplementary affidavit has been disapproved by the Division Bench of this Court in the case being FMA 435 of 2003 where the writ petitioner brought out a new case by filing supplementary affidavit and annexing documents. In that case the Division Bench of this Court observed that the Court cannot approve this kind of practice and it has to be disapproved in no uncertain terms and the Court can appreciate subsequent events after filing of the writ petition if the subsequent events are placed on record by amending the writ petition and not by filing successive supplementary affidavits. So, in the present case, also the approach of the respondent No. 4 to develop a new case by way of filing supplementary affidavit in stead of making prayer for

amendment of the writ petition cannot be approved and Learned Single Judge should not have allowed the respondent No. 4 to introduce a new case by way of supplementary affidavit. However, Learned Single Judge not only allowed the respondent No. 4 to introduce a new case by way of filing supplementary affidavit but accepted the stand of the respondent No. 4 in the name of equity.

48. It will be pertinent to quote the following relevant portion of judgment of Learned Single Judge dealing with the new case.

The contention raised by Mr. Bandopadhyay based on the contents of the supplementary affidavit, noted above, has exercised this Court's serious consideration.

In the considered view of this Court, the point raised by Mr. Bandyopadhyay has substantial force. The land of Rakshit was not acquired by NHAI in terms of provisions contained in the NH Act, yet, the structure thereon was demolished. This was at or about the same time the structure of the fourth respondent on the encroached portion was demolished in course whereof the structure which was authorised was damaged. In order to comply with the order passed by this Court on 17.3.03, the first respondent appears to have conveyed the land value of L.R. Plot No. 659, R.S. Plot No. 573(P) of Mouza Khajaanwarbed, District Burdwan amounting to Rs. 1,40,380, vide Memo dated 20.10.2003. On such determination being made and on receipt of determination made by the Government registered valuer regarding the value of structure, the same officer who affirmed the affidavit accompanying the present petition by his letter dated 2.12.03 appears to have sought for approval of the first respondent in relation to compensation determined as per Section 3G(7) of the NH Act for complying with the order of Court. It further appears from the letter dated 20.1.04 of the same officer addressed to the concerned District Magistrate that compensation determined as per Section 3G(7) of the NH Act had been vetted by the first respondent. It was pursuant to the above steps that NHAI proceeded for transfer of property by purchase instead of acquisition. For determining the compensation payable to Rakshit for demolition of his structure without recourse to law, i.e. by way of an acquisition in terms of Section 3A(1) of the NH Act, NHAI voluntarily called upon the first respondent to determine the land value (there being no specific direction on it to pay compensation in terms of Court's order dated 17.3.03) and acted on such determination made by him, and later on also proceeded to take steps for transfer by purchase on the amount being vetted by him. If one goes by the terms of the NH Act vis-a-vis the facts of Rakshit's case, NHAI had no obligation under the statute to approach the first respondent. Facts are clear that the services of the first respondent had been utilized by NHAI to wriggle itself out of a problematic situation arising out of dispossession of a citizen from his property without the authority of law. The shopping complex of the fourth respondent (the authorised portion) was demolished at or about the same time Rakshit's structure was demolished. Should

NHAI be allowed to take a different stand now in case of the fourth respondent when the first respondent upon due enquiry and survey has reached a conclusion that NHAI removing encroachments had touched upon legal constructions made by the fourth respondent and had subjected it to such damage that he is entitled to be compensated by it? The answer to the above question must be in the negative.

It is settled law that a Writ Court is not only a court of law but also a court of equity. The conduct of NHAI does not entitle it to exercise of discretion in its favour. It did not oppose determination of the issue of alleged encroachment of NH2 by the fourth respondent, by the Additional District Magistrate (LA), Burdwan. In fact, the order of the said officer having enured to its benefit, was promptly implemented. Order of the concerned District Magistrate requesting the Additional District Magistrate (LA) to decide the issue of compensation was never questioned by it. The same officer has by the impugned order now determined the amount of compensation payable to the fourth respondent by NHAI. Despite opportunity granted by the first respondent, NHAI did not appear before him and raise any objection questioning his jurisdiction. It abstained from attending the enquiry on an irrelevant and insignificant ground that a writ appeal against the order dated 20.8.02 preferred by the fourth respondent was pending. After all an officer, who is otherwise authorised by the Central Government to determine compensation payable under the NH Act to persons deprived of property due to acquisition, acting independently has applied his mind and come to a conclusion that NHAI has touched upon authorised portions of the shopping complex of the fourth respondent and has caused damage to his property while removing encroachment. It was that very officer who had determined that the fourth respondent while constructing a shopping complex had encroached a flank of NH 2. While determining quantum of compensation payable, he has taken into consideration factors spelt out in Section 3G(7) of the NH Act which he is also required to consider for determining compensation payable on acquisition of land in terms of provisions contained in the NH Act. This Court finds the approach to be fair and reasonable for it was the Additional District Magistrate (LA) who was best suited to decide as to whether NHAI overstepped the limits of the order 19.3.02 or not. The object of providing compensation is to place the claimant as far as possible in the same position financially as he was before the act by which he has been deprived of something. Perfect compensation is hardly possible to be assessed and money cannot be a complete substitute for the deprivation/loss suffered. Justice requires that it should be equal in value, although not alike in kind. A grave injustice would occasion if the Court encourages NHAI to maintain double standard. Certainly in State action is an important aspect of the rule of law. NHAI being an Article 12 authority ought to maintain uniformity and certainty in all its actions and cannot be allowed to shift stands to suit its convenience as and when it chooses. There is no basic difference in the plights of Rakshit and the fourth respondent, - both have been battered and shattered albeit via different modes. While Rakshit has been

compensated promptly to keep misdeeds of the officers of NHAI under wraps, the fourth respondent unfortunately has been dragged to Court to contest a proceeding in which NHAI has sought for orders to obliterate an order that holds it responsible for acting de hors the order by which it was granted liberty to remove encroachment. A writ petition is not intended to facilitate avoidance of obligations voluntarily incurred, is the settled law. This Court finds no sufficient reason, in furtherance of public interest, to exercise discretion in its favour.

49. Even if it is assumed on consideration of the new case introduced in the supplementary affidavit that in the Rakshit's case the NHAI accepted the compensation order of the ADM(LA) who had no jurisdiction to pass order as there was no acquisition of land under the NH Act, still then the said acceptance does not estop the appellant-writ petitioner to question the jurisdiction of the ADM(LA) to pass the order of compensation in this case when there was no acquisition under the Act and the land appertaining to plot Nos. 4603 and 4604 were not required by NHAI.

50. It is settled law that consent cannot vest an authority with jurisdiction when authority acting under a statute does not have jurisdiction. In this regard reference may be made to the decision reported in AIR (38) 1951 Supreme Court at page 230 (The United Commercial Bank Ltd. appellant, v. Their Workmen, respondents) where it has been held that consent cannot give jurisdiction to a court of limited jurisdiction which it does not possess.

51. In the case reported in [Raghunath Rai Bareja and Another Vs. Punjab National Bank and Others](#), the Apex Court has observed that it is well settled in law that consent cannot confer jurisdiction. In this case the determination of compensation by ADM(LA) is not the determination under the provisions of the NH Act as there was no acquisition of the land under the said Act and the National Highways Authority of India did not require the said land for acquisition. So the said determination of compensation being in violation of the provisions of the NH Act is illegal and any consent on the part of the appellant cannot confer jurisdiction upon the ADM(LA) to determine compensation when he had no jurisdiction to determine compensation under the N.H.Act. In this regard we are also fortified with the decision of the Apex Court reported in [S. Sethuraman Vs. R. Venkataraman and Others](#), where the Apex Court was considering the observation of the High Court which applied the principle of estoppel against the appellant and held that having submitted himself to the jurisdiction of the appellate authority he could not be permitted to question the legality of the same. The Apex Court unequivocally held that approach of the High Court was wholly erroneous. Principle of estoppel has no application in a case of this nature. The appellant did not and in fact could not confer upon an authority a jurisdiction which it did not derive under the statute. If jurisdiction cannot be conferred by consent, it cannot clothe the authority to exercise the same in an illegal manner.

52. It appears that in this case, Learned Single Judge preferred equity to law and proceeded to grant equitable relief to the respondent No. 4 even holding that the order of ADM(LA) is indefensible. In other words, Learned Single Judge holding the order of compensation indefensible in law defended the same in the name of equity. In the case reported in [Raghunath Rai Bareja and Another Vs. Punjab National Bank and Others](#), it has been held that when there is a conflict between law and equity, it is the law which has to prevail, in accordance with the Latin maxim "dura lex sed lex", which means "the law is hard, but it is the law." Equity can only supplement the law, but it cannot supplant or override law.

53. In that case, Their Lordships" quoted the observation of the Apex Court in the case of Madamanchi Ramappa v. Muthaluru Bojjappa that "What is administered in courts is justice according to law and considerations of fair play and equity however important they may be, must yield to clear and express provisions of the law."

54. Their Lordships also quoted the observations of the Apex Court in the case of Council for Indian School Certificate Examination v. Isha Mittal reported in (2007) 7 SCC 521 to the effect that "Considerations of equity cannot prevail and do not permit a High Court to pass an order contrary to the law."

55. Their Lordships also quoted observations of Apex Court in the case of [P.M. Latha and Another Vs. State of Kerala and Others](#), to the effect that "Equity and law are twin brothers and law should be applied and interpreted equitably but equity cannot override written or settled law."

56. The Apex Court quoted the observation in the case of Laxminarayan R. Bhattad v. State of Maharashtra reported in (2003) 5 SCC at page 413 to the effect that "It is now well settled that when there is a conflict between law and equity the former shall prevail."

57. At the cost of repetition it must be placed on record that in this case law is when there is no acquisition of land in terms of provisions of NH Act the ADM(LA) had no jurisdiction to pass order awarding compensation invoking the provision of Section 3G(1) and 3G(7) of the NH Act. In the teeth of such inherent lack of jurisdiction of the ADM(LA) to determine compensation under the Act the acceptance of the decision in the Rakshit's case by the appellant/writ petitioner or consent to the order or failure of the appellant to challenge jurisdiction of the ADM(LA) in this case does not clothe the respondent No. 4 with the right to have grace of equity sacrificing law. Notwithstanding the fact that in Rakshit's case, the appellant subjected to jurisdiction of the ADM(LA) the writ petitioner/appellant is entitled to have the cloak of protection of law which makes the order of ADM(LA) without jurisdiction and hence a nullity. For the conduct of the writ petitioner/appellant in the Rakshit's case or due to non appearance before ADM(LA) in this case at the time of enquiry regarding compensation and failure to raise objection questioning his jurisdiction neither the writ petitioner can be estopped from challenging the order of

compensation passed by ADM(LA) as illegal and without jurisdiction as the same de hors law nor the order of ADM(LA) who had no jurisdiction to pass such order under the Act can be defended with the shield of equity throwing away the sword of law. It is clear that the Learned Single Judge was not justified in protecting the said order of ADM(LA) and thus dismissing writ petition taking the shield of Rakshit's case with the observation that the writ petitioner/appellant cannot be allowed to take the double standard.

58. In this case as already observed learned Counsel for the private respondent relied on the decisions reported in (1997) 2 CHN 98 and (2001) 10 SCC 231 on the question of estoppel. The facts and circumstances of both the cases are distinguishable from this case.

59. In the case reported in (1997) 2 CHN 98 a party submitted to jurisdiction of an authority which otherwise had jurisdiction but in this case competent authority had no jurisdiction and as such the question of submitting to jurisdiction cannot arise. Moreover, the decision of the Calcutta High Court reported in (1997) 2 CHN 98 should be read in the context of the pronouncement of the Apex Court in the case reported in (2006) 6 SCC 382. In the case reported in (2001) 10 SCC 231 the Revenue Authority had jurisdiction to decide the case. The Income Tax Department was directed to execute a decision rendered in an earlier case. But in this case ADM(LA) had no jurisdiction.

60. Learned Counsel for the respondent No. 1 has also placed reliance upon the decisions reported in [Mahanagar Telephone Nigam Ltd. Vs. Chairman, Central Board, Direct Taxes and Another](#), and [Chief Conservator of Forests, Govt. of A.P. Vs. The Collector and Others](#), in support of his argument regarding maintainability. Both the two cases can be distinguished from the present case on the ground that in both the cases two government organisations were litigating against each other. In such case the Apex Court evolved the method of resolution of such dispute by High Powered Committee. In the present case NHAI is not litigating against any department or organisation. The writ petition is directed against an order passed by competent authority acting on the provisions of the National Highways Act and the said authority cannot be construed as the department or organisation of the Central Government. A competent authority is a quasi judicial body.

61. Even in the case reported in [Mahanagar Telephone Nigam Ltd. Vs. Chairman, Central Board, Direct Taxes and Another](#), the Apex Court recognizes that undoubtedly, the right to enforce a right in a court of law cannot be effaced. The Apex Court held that however, it must be remembered that courts are overburdened with a large number of cases. The majority of such cases pertain to Government Departments and/or Public Sector Undertakings. As is stated in Chief Conservator of Forests" case (supra) it was not contemplated by the framers of the Constitution or CPC that two Departments of a State or Union of India and/or a department of the Government and a Public Sector Undertaking fight a litigation in

a court of law. Such a course is detrimental to public interest as it entails avoidable wastage of public money and time.

62. In view of above discussions we hold that learned Single Judge should not have been swayed with the consideration of equity and he should have taken follow up action on the basis of his clear finding that the order of the ADM(LA) is indefensible. In other words, he should have allowed the writ petition.

63. In the result, the order of the Learned Single Judge dismissing the writ petition must be interfered with and appeal must be allowed.

64. The appeal is, therefore, allowed and order of the Learned Single Judge dismissing the writ petition is hereby set aside. The writ petition stands allowed. The impugned order of compensation dated 16.7.2004/2.8.2004 passed by the Additional District Magistrate (LA), Burdwan, is, hereby quashed. The respondents are restrained from giving effect to the said order or taking any steps in terms of the said order dated 16.7.2004/2.8.2004.

65. The Cross-objection filed by the respondent No. 4 being C.O.T. 45 of 2008 stands dismissed. In the circumstances, we make no order as to costs. Urgent xerox certified copy, if applied for, be given to the parties as expeditiously as possible.

Tapan Mukherjee, J.

66. I agree.