

Surendra Kumar Nathany Vs. State of West Bengal and Others

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Court : Kolkata

Decided On : Sep-01-1989

Reported in : AIR1990Cal236

Judge : Monoranjan Mallick, J.

Acts : West Bengal Land (Requisition and Acquisition) Act, 1948 - Sections 3, 3(1), 4 and 4(1);; [Land Acquisition Act, 1894](#) - Sections 3, 4, 5A and 17;; West Bengal Premises (Requisition and Control) (Temporary Provisions) Act, 1947 - Sections 2(1) and 10(1);; [Constitution of India](#) - Article 226

Appeal No. : Matter Nos. 177 and 649 of 1988

Appellant : Surendra Kumar Nathany

Respondent : State of West Bengal and Others

Advocate for Def. : Mr. Ukil

Judgement :

ORDER

1. Both the matters raise common question of law and facts and have been heard together for reasons of convenience.

2. The Matter No. 177 of 1988 has been filed by the owner of the premises No. 135E, F, G and H of Shyama Prosad Mukherjee Road, Calcutta on 15-2-1988

praying for a writ of Mandamus to withdraw, cancel and rescind the purported decision, if there be any, for acquiring the above property either under the Land Acquisition Act or under the West Bengal Land (Requisition and Acquisition) Act, 1948 or under the West Bengal Premises (Requisition and Control) (Temporary Provisions) Act, 1947 and to forthwith give quiet, peaceful and vacant possession of the said property to the petitioners.

3. This writ petition has been filed on the following allegations:

The premises No. 135E, F, G and H of Shyama Prosad Mukherjee Road, Calcutta has been kept by the Respondent under requisition by the requisition order No. 62/54 Uated May 8, 1959 under S. 2(f) of the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947. When even after the expiry of 26 years the Respondent has been using and occupying the property under orders of requisition but has neither de-requisitioned nor acquired the pro-erty the petitioners have moved a writ petition being C. O. No. 11759(W) of 1985 and on hearing both the petitioners and the respondents Mukul Gopal Mukherjee, J. has disposed of the said writ petition by the order dated August 12, 1986 by directing the State Government among others to take necessary steps for acquiring the property in accordance with law within six months from the date of the order failing which to de-requisition the property.

4. As the State Government did not take any step to acquire the property within the period specified in the above order of Mukul Gopal Mukherjee, J. the petitioners moved a contempt Rule before the learned Judge who however granted the State Government three months more time either to acquire the property or to de-requisition it.

5. From the informations available to the petitioners the respondent Government authorities have by an order No. 62/59 dated January 28, 1988 have de-requisitioned the property under S. 10(1) of the Act of 1947.

6. But when the petitioner made enquiries in the office of the Land Acquisition Collector and wanted to know as to when the respondent would give back possession of the said property the officers informed the petitioners that

Government is going to acquire the property either under the Land Acquisition Act or under the West Bengal Land (Requisition and Acquisition) Act, 1948.

7. The petitioner challenges the above action of the respondents as illegal and have alleged that after de-requisitioning the property the Respondent cannot acquire the property and consequently prays that a writ of Mandamus as prayed for may be issued and the Respondents be directed to hand over possession of the said property.

8. After this writ petition has been filed the writ petitioner has moved another writ petition being Matter No. 649 of 1988 on 18-3-1988 and rule has been issued. In that writ petition the following allegations have been made.

9. After moving the writ petition being Matter No. 177 of 1988 the petitioner has mentioned the matter before Ajit Kumar Sengupta, J, and upon prayer of the petitioner, His Lordship has passed an order dated 16-2-1988 in terms of prayer (E) to the writ petition and has also restrained the respondents from taking any steps for requisition or acquisition of the property after making over possession to the petitioner without the leave of the Court. The Respondent State attempted to get the stay of the operation of the order from the learned Judge but failed. As the order had not been complied with the petitioner moved an application for contempt to Ajit Kumar Sengupta, J., who issued the contempt Rule. The Respondents preferred an appeal against the orders of Ajit Kumar Sengupta, J. dated 15th and 16th February, 1988 and prayed for stay of operation of the said order. By the order dated 4th March, 1988 and 7th March, 1988 the Division Bench directed the parties to maintain status quo regarding possession as on date and also directed that the order dated 4th March, 1988 would not prevent the appellant State to comply with the order dated 12th August, 1986 and would not prevent them from proceeding in respect of the property in accordance with law subject however to any order which might be passed by any Division Bench of this Court.

10. Thereafter on 14th March, 1988 the petitioners learned Advocate was served with an application made by the State of West Bengal for modification of the orders made on 12th August, 1986 and 16th December, 1987 passed by Mukul Gopal Mukherjee, J. in C.O. No. 11769 of 1988. The learned Judge directed the

application to come up for hearing on 16-3-1988 but the application is still pending and has not been disposed of. In the said application the respondent annexed a copy of the purported order of acquisition dated 10th March, 1988 purported to have been published in the Calcutta Gazette Extra Ordinary dated 10th March, 1988 by which the respondents are purporting to acquire the above property under the provisions of the West Bengal Land (Requisition and Acquisition) Act, 1948 (hereinafter referred to as 1948 Act).

11. The petitioner in this writ petition has challenged the above order of acquisition as illegal on the ground that without complying with the provisions of S. 3(1) of the 1948 Act the Respondents have no authority, competence and/or jurisdiction to acquire the property under S.4 of the 1948 Act, that the above order is in violation of the orders dated 12-8-1986, 10-12-1987, 15-2-1988, 16-2-1988, 4-3-1988 and 7-8-1988.

12. It is also contended that this property is sought to be acquired for the alleged accommodation of I.B. Officers and a constable barrack which cannot be said to be the purpose of maintaining supplies and services essential to the life of the community and for purpose connected or incidental thereto, that the purported acquisition order has been issued with complete non-application of mind, that the property was kept under requisition since 1959 but so long the respondent thought it unnecessary to acquire the same from which the mala fide and ulterior motive of the respondents are apparent on the face of it and that no notice either under S. 3 or under S. 4 of the 1948 Act has even been served upon the petitioner.

13. The petitioner, therefore, prays for a writ of Mandamus to withdraw and cancel and rescind the purported order dated 10th March, 1988 being Annexure 'L' to the writ petition and for some consequential reliefs. Respondents have filed affidavit-in-opposition separately against those two writ petitions but as the writ petitions are being heard analogously, I would deal with them together. The following are the contentions of the Respondents:

14. In terms of the orders passed on 4th March, 1988 and 7th March, 1988 by the Division Bench in Appeal No. 124 of 1988 the Land Acquisition Collector has by the order dated March 10, 1988 has acquired the premises in question

requisitioned under S. 3(1) of the 1948 Act, copy of which is annexed in the affidavit-in-opposition.

15. After the second writ petition (Matter No. 649 of 1988) has been moved before Ajit Kumar Sengupta, J. on 18-3-1988 the learned Judge issued the interim order restraining the Respondents from taking further steps with regard to the property in question. The Respondents preferred appeal being Appeal No. 165 of 1988 and prayed for stay, the Division Bench heard both the Appeals being No. 124 of 1988 and the Appeal No. 165 of 1988 together passed the following order:

'The matter is part-heard and will appear five weeks hence. We direct that with in four weeks from today a sum of Rs. 15,00,000/-(Rupees Fifteen Lacs only) which is lying ready for payment be deposited with the Advocate-in-record Mr. Utpal Mazumdar for the respondents. We make it clear that even in spite of this order the orders as are pending, the respondent if so advised, may proceed with the acquisition proceedings'.

16. The petitioner A has moved Special Leave petition against the above order before the Supreme Court and the appeal has been disposed of by the Supreme Court with the following order dated 17th March, 1989:

'Special Leave granted. Heard the learned counsel for the parties.

The order passed by the Calcutta High Court on 27-2-89 is set aside. It is directed that the money will be deposited as ordered by the Court. In the meantime, acquisition proceedings shall remain stayed. The High Court is requested to hear and dispose of the writ petition expeditiously.

The appeal is disposed of accordingly.'

17. An account payee cheque amounting to Rs. 15,00,000/- (Rupees fifteen lacs) only in the name of the petitioner has already been sent to the Advocate-on-record of the petitioner Mr. Utpal Majumdar on March 29,1989 and the same has been duly accepted by him. Government decided to acquire the property for a bona fide public purpose long ago and for that purpose recourse has to be made in terms of the provision of Act II of 1948, the West Bengal Land (Requisition and Acquisition)

Act, 1948, that de-requisition of the premises under the Act V of 1947 was necessary to be issued for acquiring the property under 1948 Act, that de-requisitioning under 1947 Act and requisition under 1948 Act had been done on the same date and the acquisition under S. 4 of the 1948 is valid and in accordance with law and writ petitions are liable to be dismissed. The writ petitioner has filed separate affidavits in reply to the two affidavit-in-oppositions filed. It is contended in the said affidavit-in-reply that no order of requisition under S. 3 of the 1948 Act has been served upon the petitioners. It is also urged that the said order is in contravention of the order dated 12th August, 1986 passed by Mukul Gopal Mukherjee, J. that there was no urgency in the matter to take recourse of provisions of 1948 Act for acquiring the property in question, that the purported notice of acquisition has been issued in colourable exercise of power mechanically and in clear non-application of mind, that in any event the provision of 1948 Act have no manner of application in the facts and circumstances of the case and that no notice of requisition was validly served upon them, that no valid acquisition of the property under S. 4 of the 1948 Act could be made and that purported notice under S. 4(la) of 1948 Act is invalid and illegal.

18. The main contention of the petitioner is that there was no order of requisition under S. 3 of 1948 Act that even if there was any requisition it was not duly served and that even if it be conceded that it was served, the order of requisition is invalid as the requisition proceeding under S.3 of the 1948 Act cannot be initiated for the purpose of accommodation of I. B. Officers and a constable barrack and that requisition order under S. 3 of the 1948 being invalid and illegal the acquisition of the property under S. 4 of the 1948 Act is consequently illegal and invalid.

19. As the property was kept under requisition for above 26 years under 1947 Act, the writ petitioner moved a writ petition for quashing such requisition. Mukul Gopal Mukherjee, J. by his order dated 12th August, 1986 in CO. No. 11759(W) of 1985 disposed of the writ petition directing the State Government to take necessary steps for acquiring the property in accordance with law within a period of six months from the date of the order, failing which to de-requisition the property. As the acquisition proceeding was not initiated before the expiry of the period of six months of the date of order the petitioner moved a contempt rule. The respondents

also prayed for extension of time'on 11-2-1987 for acquiring the property on the ground that the Respondents were taking steps for acquiring the property and some more time was required to initiate the same. Mukul Gopal Mukherjee, J. by his order dated 16-12-1987 granted the Respondents three more months for acquiring the property by 15th March, 1988. Mr. Ukil appearing for the State Respondents has urged that in order to acquire the property urgently the Respondents intended to derequisition the property under the 1947 Act and simultaneously to requisition the property under S.3 of the 1948 Act. He has drawn my attention to the relevant file produced before me. From the same it is gathered that the Government in Land and Land Revenue Department issued the de-requisition order dated 28th January, 1988 under the Act of 1947 in respect of the property, that order No. 3/88 dated 9-2-1988 under S. 3(1) of the 1948 Act was issued by 1st Land Acquisition Collector, Calcutta for the purpose of requisition of the same property so that it can be acquired under S. 4 of the said Act, that on 11-2-1988 the order of derequisition under 1947 Act was fixed on 12-2-1988 at 12 noon and for restoration of possession and requisition of the premises and for taking possession under S. 3(1) of the 1948 Act was also fixed on 12-2-1988 at 12.15 p.m. that the said orders were issued upon Satya Narayan Nathany the original owner of the property but the same could not be served due to reported death of Satya Narayan Nathany. The record further reveals that fresh order of de-requisition dated 15-2-1988 fixing 17-2-1988 for restoration of possession, at 12 noon and a requisition order under S. 3(1) of 1948 for taking possession of the same at 12.15 p.m. on 17-2-1988 were issued against Suren-dra Nath Nathany and Brijendra Nath - Nathany. It is also revealed that the writ petitioner received the de-requisition Order but refused to accept the requisition order and it was thereafter duly served by affixing a copy of the order on the premises.

20. Mr. Ukil further submits that on 15-2-1988 the writ petition being Matter No. 177 of 1988 has moved by Surendra Kumar Nathany and interim order has been obtained, that after the Appellate Bench modified the orders by the order dated 4-3-1988 and 7-3-1988 the Land Acquisition Collector issued the notification under S.4(1a) of the 1948 Act acquiring the property, that the Respondent by way of abundant caution moved an application before Mukul Gopal Mukherjee, J. on 14-3-1988 praying for extension of the time for acquiring the property. Mr. Ukil,

therefore submits that the property has been acquired legally and in accordance with law and present two writ petitions are liable to be dismissed. It is also urged by Mr. Ukil that in terms of the order of the Appellate Bench the Respondents have already paid Rupees 15,00,000/- to the petitioner through his learned Advocate being part of the compensation money to show their bona fide and the petitioner therefore cannot now challenge the acquisition made under S. 4(ia) of the 1948 Act on receiving the said amount. The Land Acquisition Collector should now be permitted to conclude the acquisition proceedings and pass the award of compensation to the present owners of the property in accordance with law.

21. From the office files of the Land Acquisition Collector produced before me on the part of the Respondents, I have no doubt in my mind that the respondents including the Land Acquisition Collector, Calcutta, decided to acquire the premises No. 135/E, F, G and H of Shyama Prasad Mukherjee Road. It is not disputed that Mukul Gopal Mukherjee, J. in C.O. No. 11769(W) of 1985 by the order dated August 12, 1986 directed, amongst others, the State Government to take necessary steps to acquire in accordance with law within six months from the date of the order, failing which to de-requisition the property.

22. It is also not disputed that the respondents applied before Mukul Gopal Mukherjee, J. for extension of the period and the learned Judge granted the extension of three months by the order dated 15th December, 1987 for the purpose of acquiring the property. Mr. Ukil appearing for the respondents submits that immediately after such order of extension was passed by the learned Judge, the respondents including the Land Acquisition Collector started the urgent steps for acquiring the said property, that as the matter was very urgent and the process was to be concluded within 14th March, 1988, the respondents decided to follow the procedure laid down in the 1948 Act and for that purpose the de-requisitioning of the property under the Premises Requisition and Control (Temporary Provision) Act, 1947 (hereinafter referred to as the 1947 Act) was passed and simultaneously therewith the order of requisition under S. 3(1) of 1948 Act was passed and the attempt was made to serve both the orders on the same date i.e. on 12-2-1988 but as the said orders were issued in the name of Satyendra Nath Nathany, the original owner the same could not be served as he was reported dead.

23. The record produced by Mr. Ukil clearly supports this contention of Mr. Ukil. Thereafter the fresh de-requisition under 1947 Act dated 14th February, 1988 and a requisition order under S. 3(1) of the 1948 Act was caused to be served on the same date i.e. on 15th February, 1988. Mr. Ukil submits that even though the writ petitioner accepted the de-requisition order but did not personally accept the requisition order under S.3(1) of the 1948 Act and consequently the same had to be served by affixing the copy of the order on the premises in question on the same date and the report which is in the office file which shows that the same had actually been served by affixation.

24. That the order of requisition under S. 3(1) was served by affixation has been proved from the office file produced.

25. The decision of Calcutta High Court reported in (1983) 1 Cal LJ 371 : (AIR 1979 NOC 108) has been cited by Mr. Ukil to urge that when the notice of requisition under S. 3(1) is served by affixation which is. a recognised mode of service of the order of requisition when the person on whom the personal service is caused to be affected-refuses, it is a valid service under the law.

26. I am of the view that the order of requisition under 5.3(1) can be served by affixation under the 1948 Act. It is true that in the writ petition, the writ petitioner has denied such service, but when from the office file, it is found that the service was caused by affixation on the refusal of the petitioner to accept it then for the purpose of this writ petition I shall have to accept it as a valid service because the writ Court cannot go into the disputed question of facts. It is also urged by Mr. Ukil that thereafter the acquisition of the property under S. 4 of the 1948 Act has been made by Notification in the Official Gazette dated 10th March, 1988. A copy of the Gazette Notification has been annexed with the affidavit-in-opposition.

27. Therefore, from the above facts and circumstances revealed I have no doubt in my mind that immediately on de-requisitioning the property under 1947 Act the property has been requisitioned under S. 3(1) of the 1948 Act on 17-2-1988 and thereafter on 10th March, 1988 the property had been acquired under S. 4 of the 1948 Act. Therefore, there was first requisition under S. 3(1) of 1948 Act followed by acquisition. In that view the contention of the writ petitioner that the order of

acquisition under S. 4 of 1948 Act is invalid on the ground that there was no . requisition of the property under S. 3(1) of the Act is not sustainable. In my view there was an order of requisition under S. 3(1) duly served on 17-2-1988 and that was followed by the order of acquisition by a Government Notification published in the Official Gazette dated 10th March, 1988.

28. Mr. Mitra appearing on behalf of the writ petitioners submit that even if it be assumed that there was a valid requisition under S. 3(1) of the 1948 Act followed by an acquisition of the property under S. 4 of the Act, the entire proceeding of the acquisition of the property of 1948 Act is illegal and invalid because the purpose in which the requisition under S. 3(1) of the 1948 Act has been made is not a purpose for which there can be a valid requisition under S. 3(1) of the 1948 Act and consequently the order of requisition is invalid and the acquisition of the said property on the basis of such invalid requisition order is consequently invalid.

29. Mr. Mitra draws my attention to S. 3(1) of 1948 Act. He is also draws my attention to the copy of the requisition order annexed with the affidavit-in-opposition and submits that a requisition under S. 3(1) can be made only for the specified public purposes mentioned in S.3(1) of 1948 Act and the purpose mentioed in S. 3(1) for requisition of the premises in question, namely, for accommodation of Intelligence Branch Officers and a Constable Barrack is not a purpose for which a requisition order under S. 3(1) of the 1948 Act can be passed.

30. Annexure 'C' to the affidavit-in-opposition is the xerox copy of the order of requisition dated 9-2-1988 issued to Surendra Kumar Nathany and Dwijendra Kumar Poddar. The order of requisition reads thus:

'Whereas in my opinion it is necessary for the purpose of maintaining supplies and services essential to the life of the community and for purposes connected therewith or incidental thereto, namely, for accommodation of I.B. Officers and a Constable Barrack -- to requisition the land described in the schedule below.

** ** *

.....Now, therefore, in exercise of the power conferred by sub-sec. (1) of S. 3 of the West Bengal (Requisition and Acquisition) Act, 1948.I do hereby requisition the land mentioned in the schedule below and make the following other orders.....'

31. Mr. Mitra submits that accommodation of I.B. Officers and Constable Barrack has nothing to do with maintenance of supplies and services essential to the life of the community and for purpose connected therewith or incidental thereto.

32. It is, therefore, urged that there cannot be any requisition of the property under S. 3(1) for the accommodation of I.E. Officers and a Constable Barrack. In support Mr. Mitra cites before me the decision of Bhaga-bati Prasad Banerjee, J. in *Howrah Mills Ltd. v. State of West Bengal*, (1988) 1 Cal HN 367 and *Sayed Fateyeb Ali Mirza v. Union of India*, (1989) 1 Cal LJ page 214.

33. Mr. Ukil appearing for the respondents submits that it is true that the purpose of requisition and the subsequent acquisition of the property is for the accommodation of the Police Officers of I.B. but also for a Constable Barrack. He submits that the constables are engaged for the law and order and they are on duty for 24 hours and their work is essential service for the community and the requisition of the property and for its ultimate acquisition under S. 1948 Act for the Constable Barrack is definitely a purpose of maintaining the supplies and services essential to the life of the community and for the purpose connected or incidental thereto and the respondents, regard being had to the urgency of acquiring the property in view of the order passed by Mukul Gopal Mukherjee, J. and bona fide and in good faith took the proceeding under 1948 Act and had already acquired the property and has also in terms of the order passed by the Division Bench in *Mandamus Appeal* deposited Rs. 15,00,000/- to the learned Advocate for the petitioner and the learned Advocate for the petitioner has accepted the same and the same is to be adjusted with the future award of compensation to be paid to the petitioner and the petitioners cannot now challenge such bona fide act of acquisition in obedience to the order passed by Mukul Gopal Mukherjee, J. and this Court cannot under Art. 226 of the Constitution should interfere with such acquisition proceeding and the acquisition proceeding should be permitted to

continue.

34. On hearing the submissions made by Mr. Ukil and on perusing the office file produced before me, I have no doubt in my mind as regards the bona fide of the action of the Land Acquisition Collector in the matter of complying with the order passed by Mukul Gopal Mukherjee, J. long before the expiry of the period of three months which was to expire on 14th March, 1988, the Land Acquisition Collector took effective steps for the purpose of complying with the order of the Court. But for acquiring the property in accordance with law in terms of the order passed by Mukul Gopal Mukherjee, J. the Land Acquisition Collector did not have only the provision of 1948 Act to resort to. For the purpose of acquiring any property for any public purpose the main Act is a Central Act being the Land Acquisition Act.

35. The acquisition of the property for the purpose of accommodation of the Police Officers of the Intelligence Branch as well as for a Constable Barrack is definitely a public purpose.

36. Mr. Mitra appearing for the writ petitioners also does not dispute before me that the acquisition for the purpose of accommodation of the I.B. Officers and Constable Barrack is a public purpose. His client did not also file any appeal against the order of Mukul Gopal Mukherjee, J. by which the learned Judge directed the respondents either to acquire the property within the period of six months or to de-requisition it.

37. There cannot be no (any) doubt that the respondents did not intend to de-requisition of the property. They had the bona fide intention to acquire the property. Even though within six months of the order of the learned Judge the Acquisition proceeding should not be initiated but it had been initiated within the extended period. In the meantime also Rs. 15,00,000/- had already been deposited with the learned Advocate for the petitioner presumably to show the bona fide of the respondents that they had the genuine intention to acquire the property for a public purpose.

38. Even then the question really remains as to whether the Respondents specially the Land Acquisition Collector was justified in taking recourse to 1948 Act for

the purpose of acquiring the property in conformance with the order passed by Mukul Gopal Mukherjee, J.

39. There can be no doubt that the requisition and the acquisition under 1948 Act cannot be made for every public purpose. In *Jiwani Kumar v. First Land Acquisition Collector*, : [1985]1SCR686 the Supreme Court has observed at page 1713, that it will not be correct to say that in no case an order of requisition for permanent purpose can be made. So even if the purpose is a permanent one, there can be a requisition under S. 3(1) of 1948 Act to be followed by acquisition under S. 4 of the 1948 Act but it is to be remembered that the requisition under S. 3(1) is only to be invoked for specified public purposes mentioned in S. 3(1) of 1948 Act. In *Howrah Mills Ltd. v. State of West Bengal*, (1988) 1 Cal HN 367, B. P. Banerjee, J. has elaborately considered the provision of S. 3(1) and has clearly held that under 1948 Act requisition can only be made only for specific purposes and if the situation and/or the purpose mentioned in S. 3(1) is fulfilled and thereafter if it is necessary to keep the property in that event the same may be acquired, that the purpose of the Act is for special requisition in order to meet the situation and as in the instant case the requisition was found by the learned Judge to be beyond the scope of S. 3(1) of the Act he quashed the order of requisition.

40. Similarly in *Syed Fateyab Meerza's case* (1989-1 Cal LJ 214) the learned Judge also struck down the order of requisition under S. 3(1) of the 1948 Act on the ground amongst the others that there cannot be any requisition of the property under S. 3(1) for construction of quarters for officers and ministers. The learned Judge has observed that the order of requisition under S. 3(1) was passed without jurisdiction inasmuch as the said Act can only be invoked for the purpose of requisition of land for permanent purpose and further the purpose for which the land is sought to be requisitioned being for the purpose of construction of quarters for officers and ministers falls beyond the purposes mentioned in S. 3(1) of the 1948 Act. The following observation of the learned Judge at para 11 pages 223 and 224 reads thus:

'The purpose could not be said to be a purpose for the maintaining supplies and services essential to the life of the community and/or for increasing employment

opportunities for the people by establishing commercial estate and industrial estate in different areas or for providing proper facilities of transport communication, irrigation or drainage or for creation for better living condition in rural and urban area. The word '-supplies and services essential to the life of the community' has got its definite connotation. Supplies and services essential to the life of the community means electricity water supply, sanitation and other essential things without which the life of the community would come to a stand still. By no stretch of imagination it can be said the constructions of quarters for Officers and Ministers are for the purpose of maintaining supplies and services essential to the life of the community, within the scope and ambit of the said Act, such a wide connotation to the meaning of this word could not be given, inasmuch as, the purposes of this Act are for speedy requisition and/or acquisition of land for some urgent purposes specifically mentioned in the said Act. At the same time, it has to be remembered that there was a general law for acquisition of land namely the Land Acquisition Act. The object of this Act could not be widened so as to bring all public purposes within the scope of this Act.'

41. Giving my anxious consideration to Mr. Ukil's submission that the services of the constable in maintaining law and order in the society is essential to the life of the community, yet, the constable barrack cannot by any stretch of imagination be a purpose for maintaining supplies and services essential to the life of the community. The expression 'service' mentioned in S. 3(1) did not include within the purview services rendered by a constable in maintaining law and order in the society.

42. I am, therefore, unable to hold that the requisition of the property for Constable Barrack is permissible under S. 3(1) of the 1948 Act. In view of the above two Judgments of Bhagabati Prasad Banerjee, J. referred to before me, I have no doubt in my mind that the accommodation of the I. B. Officers and Constable Barrack is not a specified public purpose within the meaning of S. 3(1) of 1948 Act.

43. I am, thus unable to accept the contention of Mr. Ukil that in order to comply with the order passed by Mukul Gopal Mukherjee, J., Land Acquisition Collector, Calcutta was justified in invoking S. 3(1) of 1948 Act by issuing the order of

requisition and then to acquire the property under S. 4 of that Act.

14. However, I am of the view that there is no lack of bona fide on the part of the action taken by the Land Acquisition Collector or for that purpose the State of West Bengal. There was no doubt that the State of West Bengal had the bona fide intention to acquire the property for the purpose of accommodating the I. B. Officers and Constable Barrack and in obedience to the order of Mukul Gopal Mukherjee, J. the State of West Bengal through Land Acquisition Collector has taken steps in the matter of acquisition. But I am of the view that due to misapprehension of the power conferred under 1948 Act the Land Acquisition Collector made a bona fide error in taking recourse to the acquisition of the property under the provision of 1948 Act, i.e. by requisitioning it under S. 3(1) of the Act and acquiring it under S. 4 of the Act. As there was a bona fide public purpose for acquisition of the property the Land Acquisition Collector ought to have issued a Notification under S. 4 of the Land Acquisition Act for the purpose of acquiring the property under that Act. Mr. Ukil submits that as there was grave emergency to take action, the provisions of 1948 Act were taken recourse to because the acquisition proceeding under the Land Acquisition Act is a long drawn proceeding.

45. I am of the view that even though I have no doubt in my mind regarding the bona fide of the action of the Land Acquisition Collector, yet, due to misapprehension of the concept of law regarding acquisition of the property recourse to the provisions of the Land Acquisition Act had not been taken recourse to. Even though ordinarily the acquisition proceeding under the Land Acquisition Act takes longer time, yet, in case of emergency there is the adequate provision under S. 17 of the Act to dispense with the hearing of objection under S. 5A of the Act and take urgent possession of the property regard being had to the emergency situation prevailing for the purpose of acquisition. Therefore, the Land Acquisition Collector should not have to take recourse to 1948 Act to acquire the property for the purpose of accommodation of I. B. Officers and Constable Barrack.

46. As I have no doubt that the respondents including the Land Acquisition Collector did not have any mala fide motive in taking recourse to the provision of

1948 Act and did it due to misconception of law. I would, therefore, give the respondents a further opportunity to complete the acquisition proceeding. If, however, the recourse to the provision of Land Acquisition Act is not taken within the period of three months from this date, then on the expiry of the period of three months the possession of the property shall be handed over to the writ petitioner.

47. I, therefore, dispose of both the writ petitions with the following order:

48. The Land Acquisition Collector, Calcutta shall within the period of three months from the date of this order initiate a Land Acquisition proceeding for acquiring the premises No. 135/E, F, G and H Shyama Prasad Mukherjee Road, Calcutta under the Land Acquisition Act and complete the acquisition proceeding as expeditiously as possible. The amount of Rs. 15,00,000/- which has already been paid to the learned Advocate to the writ petitioner shall be kept with the learned Advocate and he shall invest it to some short-term deposit. The amount so paid shall be adjusted with the award to be passed by the Land Acquisition Collector on acquiring the property under the provision of the Land Acquisition Act. However, if the Land Acquisition Collector fails to initiate the proceeding under the provision of the Land Acquisition Act to acquire the property within this period, the respondents shall deliver entire possession of the property to the writ petitioner and in that case the writ petitioner shall also refund the amount of Rs. 15,00,000/- and interest accrued thereon.

49. This judgment shall govern both the matter Nos. 177 of 1988 and 648 of 1988.

50. There is no order as to costs.

51. Order accordingly.