

Constitutional Writ
Present:
The Hon'ble Justice Debasish Kar Gupta
W. P. No.3719(W) of 2005
Tara Chand Chowdhury & Anr.,
versus
The State of West Bengal & Ors.,
Judgment On: 01-2-2010.

Point:

ACQUISITION: State has not served notice under section 9(3B) of the Land Acquisition Act, 1894 - Whether vitiates the acquisition proceedings - Land Acquisition Act, 1894, S. 9(3B).

Fact: The petitioners filed the instant writ application seeking a direction upon the respondents to release the plots of land situated at District Howrah. The petitioners purchased the said plots of land, by executing registered sale deeds and after taking physical possession of the said plots of land the petitioners got their names mutated in the records of Right in respect of the same. Suddenly, the petitioner No.1 received a notice from the Additional Land Acquisition officer, Howrah Improvement Trust, Howrah directing the petitioner No.1 to appear before him in connection hearing on the basis of purported Notice issued under Section 9(3B) of the Land Acquisition Act, 1894 in a Land Acquisition case for acquisition of the said plots of land. Ultimately, the awards were declared in connection with the proceedings under reference under the provisions of section 11 of the Land Acquisition Act, 1894.

Held:

Undisputedly, the notice dated May 17, 2004 served upon the petitioner No.1 by the Additional land Acquisition Officer, Howrah Improvement Trust, Howrah, was not a notice issued under Section 9(3B) of the Land Acquisition Act, 1894.

Paragraph – 18

Court directed the respondent authority to release the said plots of land to the petitioners within three months from the date of communication of this order.

Paragraph - 23

Cases:

Nazir Ahmed Vs. King Emperor, reported in AIR 1936 PC 253, Shiv Kumar Chandha Vs. Municipal Corp. of Delhi, reported in (1993) 3 SCC 161, Indian Banks' Assn. Vs. Devkala Consultancy Service, reported in (2004) 11 SCC 1, Sanjeev Gupta Vs. Union of India, reported in (2005) 1 SCC 45, Gopesh Chandra Vs. Benode Lal, reported in 40 CWN 553, Lila Deb Chowdhury Vs. State of West Bengal, reported in (2002) 1 CLT(HC) 273, Sabitri Devi Vs. State of W. B., reported in 2002(3) CHN 108, Pallav Kumar Banerjee Vs. State of W. B., reported in 2007(2) CLJ 1, CMDA Vs. Minerva Biswas, reported in 2009(4) CHN 56, Girnar Traders Vs. State of Maharashtra, (2007)7 SCC 555, Bishalaksha Basu Vs. State of W. B., reported in 2009(3) CHN 642

U.P. Nal Nigam Lucknow Vs. M/s Kalra Properties(P) Ltd. reported in AIR 1996 SC 1170, State of Punjab Vs. Gurdial Singh & Anr., reported in AIR 1984 P & H, Nasik Municipal Corp. Vs. Harbanslal L. Rajpal, reported in AIR 1997 SC 1701, Awadh Bihari Yadav Va. State of Bihar

& Ors., reported in AIR 1996 SC 122, Pratap Vs. State of Rajasthan, reported in AIR 1996 SC 1296, State of W. B Vs. Soumendra Mohan Dey, reported in I.L.R 2993(1) 505, State of Karnataka Vs. Muniyalla, reported in AIR 1985 SC 470, B. S. E. Brokers' Forum Vs. Securities & Exchange Board of India, reported in (2001) 3 SCC 482, Samarendra Nath Paul & Ors. Vs. West Bengal Housing Board, reported in 2000(2) CHN 771 and one unreported decision of State of West Bengal Vs. Starling Stock Brokers Pvt. Ltd (in re. C. A. No.6537-6563 of 2001)

For Petitioner : Mr. Ashok Banerjee,
Mr. Pratik Prokash Banerjee,
Mr. Saumen Dutta,
Mr. Shamim Ahmed.

For State : Mr. A. N. Banerjee,
Mr. Ziaul Islam

For Respondent No.7 : Mrs. Monjuli Chowdhury

The Court:

1. This writ application is filed by the petitioners praying for a writ in the nature of Mandamus commanding the respondents to release the plots of land laying and situated at R.S. Dag Nos.1441 to 1447, 1328, 1332 and 1371, J. L. No.54, Mouza-Pakura, Police Station- Domjur, Distract Howrah(hereinafter referred to as the said plots of land).

2. The Brief facts of this case are as follows:-

3. The petitioners purchased the said plots of land, amongst other plots of land, by executing registered sale deeds as under:

	R.S. Dag No.	Classification	Total areas of plot (Decimals)	Purchased area (Decimals)	Deed No	Date
1.	1441	Sali	05	05	980	27-03-2000
2.	1442	Sali	17	17	980	27-03-2000
3.	1443	Sali	38	38	1200	05-04-2000
4.	1444	Sali	36	18	979	27-03-2000
5	1445	Sali	34	34	916	10-03-2000
6	1446	Sali	18	18	845	10-03-2000
7	1447	Danga	20	10.75	846	10-03-2000
8	1328	Sali	65	65	1191	20-04-2000
9	1332	Sali	10	10	1198	17-04-2000
10	1771	Sali	17	17	1592	27-06-2000

4. After taking physical possession of the said plots of land the petitioners got their names mutated in the records of Right in respect of the same. The petitioners developed the said plots of land by filling earths and fencing the same with brick wall. The petitioners started running of factory of wax slab thereat after obtaining trade licence, pollution certificate from the competent authority.

5. Suddenly, the petitioner No.1 received a notice from the Additional Land Acquisition officer, Howrah Improvement Trust, Howrah under his memo No.331(14)/L.A.(PT) dated may 17, 2004 directing the petitioner No.1 to appear before him on May 26, 2004 in connection hearing on

the basis of purported Notice issued under Section 9(3B) of the Land Acquisition Act, 1894 in L. A. case Nos.26/Act-II/'86-87, 29/Act-II/'86-87 and 29/1/Act-II/'86-87 for acquisition of the said plots of land.

6. The facts relating to acquisition proceedings bearing L.A. case No.26/Act-II/'86-87, 29/Act-II/'86-87 and 29/1/Act-II/'86-87 were as follows:-

7. Notice under sub-section (1) of section 3 of the said Act II, 1948 was issued on December 3, 1963 for requisition of the said plots of land, amongst other plots of land. The above notice was published in the official Gazette on December 26, 1963. Formal possession of the said plots of land, amongst other plots of land, was made over to the Calcutta Metropolitan Development Authority on May 24, 1988. Notice dated February 4, 1989 was issued under sub-section 1(a) of section 4 of the said Act II, 1948 for acquiring the said plots of land, amongst other plots of land for the public purpose of increasing employment opportunities for the people by establishing commercial Estate and Industrial Estate and for creation of better living conditions in rural areas namely, for the construction of West Howrah Township Project. No further step was taken by the respondents in the above proceedings during the existence of the said Act II, 1948.

8. Necessary to mention that the life of the said Act II, 1948, was not extended beyond March 31, 1997. The Land Acquisition Act, 1894 was amended on May 2, 1997 by introducing Sections 9(3A) and 9(3B) with a view enable the State authorities to conclude those proceedings which had been pending till March 31, 1997. Notice under section 9(3B) was applicable in respect of those pending proceedings where declaration under sub-section 1(a) of Section 4 of the said Act II, 1948 had been issued.

9. In the case, notice on or about January 22, 2004 was purportedly issued in respect of the plots of land in question, amongst other plots of land. Subsequently, a notice was issued by the Additional Land Acquisition Officer, Howrah Improvement Trust, Howrah, under memo. No.331(14)/L.A.(PT) dated May 17, 2004 to the petitioner No.1 amongst others, directing the petitioner No.1 to appear before him in connection with hearing on the basis of purported notice issued under section 9(3B) of the Land Acquisition Act, 1894. Ultimately, the awards were purportedly declared in connection with the proceedings under reference under the provisions of section 11 of the Land Acquisition Act, 1894, purportedly on October 11, 2004.

10. According to the petitioners the said plots of land were not acquired in accordance with law. According to them neither the proceedings under reference were completed within March 31, 1997, i.e. during the lifetime of the said Act II, 1948, nor any notice was issued in connection with those proceeding under section 9(3B) of the Land Acquisition Act, 1894. According to the petitioners that in absence of a valid notice issued under section 9(3A) or 9(3B) of the Land Acquisition Act, 1894, the claim of the respondents with regard to continuation of the proceedings under reference after the expiry of the life of the said Act II, 1948, was not valid in accordance with law. According to the petitioners, they are still in physical possession of the said plots of land.

11. On behalf of the petitioners the decisions of **Nazir Ahmed Vs. King Emperor, reported in AIR 1936 PC 253, Shiv Kumar Chandha Vs. Municipal Corp. of Delhi, reported in (1993) 3 SCC 161, Indian Banks' Assn. Vs. Devkala Consultancy Service, reported in (2004) 11 SCC 1, Sanjeev Gupta Vs. Union of India, reported in (2005) 1 SCC 45, Gopesh Chandra Vs. Benode Lal, reported in 40 CWN 553, Lila Deb Chowdhury Vs. State of West Bengal, reported in (2002) 1 CLT(HC) 273, Sabitri Devi Vs. State of W. B., reported in**

2002(3) CHN 108, Pallav Kumar Banerjee Vs. State of W. B., reported in 2007(2) CLJ 1, CMDA Vs. Minerva Biswas, reported in 2009(4) CHN 56, Girnar Traders Vs. State of Maharashtra, (2007)7 SCC 555, Bishalaksha Basu Vs. State of W. B., reported in 2009(3) CHN 642 are relied upon.

12. According to the respondents admittedly the proceedings in respect of the said plots of land could not be completed during the lifetime of the said Act II, 1948. But notice under section 9(3B) of the Land Acquisition Act, 1894 was issued in respect of the said plots of land on or about January 24, 2004. And the proceedings under reference were completed by declaration of the award under section 11 of the above Act. According to the respondents bonafide omission to serve the notice under section 9(3B) upon the petitioners of the Land Acquisition Act, 1894 did not vitiate the proceedings under reference. According to the respondents the purchase of the plots of land in question by the petitioners after acquisition of the same was not valid in the eye of law.

13. Reliance is placed on the decisions **U.P. Nal Nigam Lucknow Vs. M/s Kalra Properties(P) Ltd. reported in AIR 1996 SC 1170, State of Punjab Vs. Gurdial Singh & Anr., reported in AIR 1984 P & H, Nasik Municipal Corp. Vs. Harbanslal L. Rajpal, reported in AIR 1997 SC 1701, Awadh Bihari Yadav Va. State of Bihar & Ors., reported in AIR 1996 SC 122, Pratap Vs. State of Rajasthan, reported in AIR 1996 SC 1296, State of W. B Vs. Soumendra Mohan Dey, reported in I.L.R 2993(1) 505, State of Karnataka Vs. Muniyalla, reported in AIR 1985 SC 470, B. S. E. Brokers' Forum Vs. Securities & Exchange Board of India, reported in (2001) 3 SCC 482, Samarendra Nath Paul & Ors. Vs. West Bengal Housing Board, reported in 2000(2)**

CHN 771 and one unreported decision of State of West Bengal Vs. Starling Stock Brokers Pvt. Ltd (in re. C. A. No.6537-6563 of 2001) in support of the above submissions.

14. I have heard the learned counsels appearing for the respective parties at length and I have given my anxious considerations to the facts and circumstances of this case.

15. Admittedly, notice under sub-section (1) of section 3 of the said Act, 1948, was issued in respect of the said plot of land. It is also not in dispute that declaration dated February 4, 1989 was made under sub-section 1(a) of section 4 of the said Act II, 1948, in respect of the said plots of land. It is also not in dispute that the acquisition proceedings in respect of the said plots of land could not be completed during the lifetime of the said Act II, 1948. The notice purportedly issued in respect of the said plots of land under the provisions of section 9(3B) of the Land Acquisition Act, 1894 is quoted below:-

“From of special notice to be issued under sub-sections (3) and (4) of section 9, Act of 1894, to the suppliers of the land to be taken up and other persons known or believed to be interested in it, or to be entitled to act for persons so interested.

Notice is hereby given that 21.245 acres (8.597 hectares), more or less of land situate in or near the mouza Pakuria J.L. No.54, P.S. Domjur District Howrah described below and recently marked out and measured, are about to be taken by the Government for under Act 1 of 1894, in accordance with a Declaration No.9252- L.A (II) I-G/29/89 dated 04-2-1989, published in the Government Gazette of the 14-12-1989 (date), The date of declaration under section 6 of the Act is.....

2. If you have any interest in this land or are entitled to act for person so interested, you are hereby called upon to appear personally or by agent on 29/1/04 at the office of Khalia Co. Bank Ltd., at 12=00 A.M. to state the nature of such interest in the land, and the amount and particulars of any claim you may wish to prefer for the same, and your objections, if any, to the measurements made under section 4 of the Act.

LAND SCHEDULE

Mouza	Jurisdiction	List	No.(s)
.....54.....			
P.O.....	District.....	Howrah	
Revisional Settlement Plot Nos. in full:			

Revisional Settlement Plot Nos. in full:

Plot Nos	Specific portion of the Plot	Area in	
		Acres	hectares
—			
1439(F) Danga		.18	
1444(F) Sali		.36	
1531(F) Danga		.02	
1585(F) Danga		.15	
1535(F) Danga		.09	

**Collector,
Under Act 1 of 1894**

—
Copy forwarded for information and necessary action to:
Sri Bishnupada Ghosh, Vill..... Pakuria
P.O....., P.S.Domjur , Dist. Howrah. Owner of the plot(s) mentioned above.

**Collector,
Under Act 1 of 1894”**

16. From a bare reading of the above notice, it is crystal clear that the above notice was issued under the provisions of sub-sections (3) and (4) of Section 9 of the Land Acquisition Act, 1894 and not under the provisions of section 9(3B) of the above Act. In order to adjudicate this issue, the provisions of section 9(3B) of the Land Acquisition Act, 1894 are quoted below:-

“3B. The Collector shall also serve notice to the same effect on all such persons known or believed to be interested in any land, or to be entitled to act for persons so interested, the possession whereof has already been taken on requisition under section 3 of the said Act and notice for acquisition of such land has also been published under sub-section (1a) of section 4 of the said Act, and, in every such case, the provisions of

section 4, section 5, section 5A, section 6, section 7, section 8 and section 16 of this Act shall be deemed to have been complied with.

Provided that the date of publication of notice under sub-section (1a) of section 4 of the said Act shall be the date of reference for purpose of determining the value of such land under this Act:

Provided further that in every such case, the Collector shall make an award under section 11 in respect of such land only for the purpose of payment of due compensation to the persons interested in such land where such land has, upon the Collector taking possession thereof, already vested absolutely in the Government, free from all encumbrances”.

17. After taking into consideration the above provisions and the form of special notice to be issued under sub-sections (3) and (4) of the section 9 of the Land Acquisition Act, 1894, the notice under reference cannot be said to be a notice under section 9(3B) of the Land Acquisition Act, 1894. noteworthy that on the basis of the materials available no record, no such special notice was served upon the petitioners.

18. Undisputedly, the notice dated May 17, 2004 served upon the petitioner No.1 by the Additional land Acquisition Officer, Howrah Improvement Trust, Howrah, was not a notice issued under Section 9(3B) of the Land Acquisition Act, 1894.

19. By a judgment dated September 25, 2008 delivered in the similar matter of M/s. Rungta Agencies Ltd & Ors., Vs. State of West Bengal & Ors. (in re: W.P. No.654 of 2004), this court held in similar case as follows:-

“It appears that the above notice was issued under sub-sections (3) and (4) of Section 9 of the Land Acquisition Act 1894. Now the provisions of sub-section (3B) of Section 9 of the land Acquisition Act, 1894 were quoted below:

“3B. The Collector shall also serve notice to the same effect on all such persons known or believed to be interested in any land, or to be entitled to act for persons so interested, the possession whereof has already been taken on requisition under section 3 of the said Act and notice for acquisition of such land has also been published under sub-section (1a) of section 4 of the said Act, and, in every such case, the provisions of section 4, section 5, section 5A, section

6, section 7, section 8 and section 16 of this Act shall be deemed to have been complied with.

Provided that the date of publication of notice under sub-section (1a) of section 4 of the said Act shall be the date of reference for purpose of determining the value of such land under this Act:

Provided further that in every such case, the Collector shall make an award under section 11 in respect of such land only for the purpose of payment of due compensation to the persons interested in such land where such land has, upon the Collector taking possession thereof, already vested absolutely in the Government, free from all encumbrances”.

After perusing provisions of sub-section 3B of Section 9 of the Land Acquisition Act 1894 and the form of special notice to be issued under sub-section (3) and Section(4) of sub-section (9) of the Land Acquisition Act 1894, the above notice cannot be claimed to be the notice issued under Section (3B) of Section 9 of the Land Acquisition Act 1894.

Therefore, I find that the proceeding under reference was not continued under the Land Acquisition Act 1894 by invoking the provisions of sub-section (3B) of Section 9 of the Land Acquisition Act 1894.

The law is settled on this aspect that where a power is given on the basis of a statutory provision to do a certain thing in a certain way, it must be done in that way or not at all. In this regard the relevant portions of the decision of Nazir Ahmed Vs. King Emperor reported in AIR 1936 PC 253 are quoted below:

“To this contention it was answered that there was no ground for reading the word “may” in S. 164 as meaning “must” on the principle described in 5 A C 214(18). There is no need to call in aid this rule of construction—well recognised in principle but much debated as to its application. It can hardly be doubted that a magistrate would not be obliged to record any confession made to him if, for example, it were that of a self-accusing madman or for any other reason the Magistrate thought it to be incredible or useless for the purposes of justice. Whether a Magistrate records any confession is a matter of duty and discretion and not of obligation. The rule which applies is a different and not less well recognised rule, namely, that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. This doctrine has often been applied to Courts – 1 Ch D 426 (19) at p. 431 – and although the Magistrate acting under this group of sections is not acting as a Court, yet he is a judicial officer and both as a matter of construction and of good sense there are strong reasons for applying the rule in question to S.164.”

In view of the above settled principles of law I find that the said lands were not acquired by the respondent authorities in accordance with law.”

20. I do not find any reason to take a different view in the matter.

21. The cases cited by the learned advocate appearing for the State respondents are not applicable in this case for distinguishable facts of those cases. Nor the issue involved in the instant case was decided in any of those cases. In the matters of **U. P. Jal Nigam Lucknow(supra)**, **Awadh Bihari Yadav(supra) and Pratap(supra)** the applicability of the provisions of section 11-A of the Land Acquisition Act, 1894, was the issue before the court where declaration under section 6 of the above Act has been made apart from taking over possession of the land under Section 17(2) of the above Act. But in the instant case it has already been held that the provisions of the Land Acquisition Act, 1894, was not made applicable by issuing a notice under section 9(3B) of the above Act. Similarly, in the matter of **Gurdial Sing(Supra)** bonafide omission to serve special notice under section 9(3) on any of persons interested was under scrutiny of the Court. In the matter of **Nasik Municipal Corporation(supra)**, the consequence of failure to issue notice under section 9 of the Land Acquisition Act, 1894, in connection with a proceeding under the selfsame Act was the subject matter. In the matter of **Soumendra Mohen Dey(supra)** the relevant date for determining compensation in a case where the provisions of 9(3A) or 9(3B) of the Land Acquisition Act, 1894, was validly issued, was the subject matter. In the matter of **Muniyalla (supra)**, the consequence of racial of wrong section was under scrutiny of the Court. But in the instant case it has been held herein above that the provisions of 9(3B) was not invoked in the manner prescribed for continuation of a proceeding under Land Acquisition Act, 1894, which had been initiated under the West Bengal Land(Requisition and Acquisition) Act, 1948, during its lifetime. For the same reason, the decision of **B.S.E. Brothers' Forum, Bombay(supra)** has no

manner of application in the instant case for its distinguished facts and circumstances. The facts and the issues involved in the matter of **Samarendra Nath Paul(supra)** and in the unreported case of Starling Stock Brokers Pvt. Ltd are altogether different to that of the instant case.

22. Reference may be made to the decision of **Zee Telefilms Ltd. vs. Union of India, reported in (2005)4 SCC 649** to recollect the settled principles of law before applying a decision at the time of disposal of a matter and the relevant portions of the above case are quoted below:

“254. Are we bound hands and feet by Pradeep Kumar Biswas? The answer to the question must be found in the law of precedent. As decision, it is trite, should not be read as a statute. A decision is an authority for the questions of law determined by it. Such a question is determined having regard to the fact situation obtaining therein. While applying the ratio, the court may not pick out a word or a sentence from the judgment divorced from the context in which the said question arose for consideration. A judgment, as is well known, must be read in its entirety and the observations made therein should receive consideration in the light of the questions raised before it.

255. Although decisions are galore on this point, we may refer to a recent one in **State of Gujarat Vs. Akhil Gujarat Pravasi V. S. Mahamandal** wherein this court held:

“it is trite that any observation made during the course of reasoning in a judgment should not be read divorced from the context in which it was used.”

256. **It is further well settled that a decision is not an authority for a proposition which did not fall for its consideration. It is also a trite law that a point not raised before a court would not be an authority on the said question.** In **A-One Granites v. State of U.P.** it is stated as follows:

“11. This question was considered by the Court of Appeal in **Lancaster Motor Co.(London) Ltd. Vs. Bremith Ltd. and it was laid down that when no consideration was given to the question, the decision cannot be said to be binding and precedents sub silentio and without arguments are of no moment.”**

(Emphasis supplied)

23. I, therefore, direct the respondent authority to release the said plots of land to the petitioners within three months from the date of communication of this order.

24. However, this order will not prevent the respondents from acquiring the said plots of land in accordance with law.

25. This writ application is thus disposed of.

26. There will be, however, no order as to costs.

27. Urgent xerox certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(Debasish Kar Gupta, J.)

Later:

Date- 01/02/2010

After delivery of this judgment a prayer is made for staying of operation of this order and that prayer is rejected.

(Debasish Kar Gupta, J.)