

**IN THE HIGH COURT AT CALCUTTA**  
**Civil Appellate Jurisdiction**  
**ORIGINAL SIDE**

**BEFORE:**

**The Hon'ble Justice Soumen Sen,  
And**

**The Hon'ble Justice Saugata Bhattacharyya**

**A.P.O. 523 of 2017**  
**W.P. No. 930 of 2016**  
**KOLKATA MUNICIPAL CORPORATION & ANR.**  
**VS.**  
**BIMAL KUMAR SHAH**

**A.P.O. 210 of 2018**  
**W.P. No. 930 of 2016**  
**BIMAL KUMAR SHAH**  
**Vs.**  
**STATE OF WEST BENGAL & Ors.**

For the Appellant : Mr. Alak Kumar Ghosh, Adv.  
Mr. Gopal Chandra Das, Adv.  
Mr. Debangshu Mondal, Adv.

For the Respondent : Mr. Partha Sarathi Sengupta, Sr. Adv.  
Mr. Utpal Bose, Sr. Adv.,  
Mr. M. Bose, Adv.  
Mr. Pushan Kar, Adv.  
Mr. Sagnik Majumdar, Adv.  
Mr. Rishav Kormani, Adv.

Hearing Concluded on : 5<sup>th</sup> December, 2019

Judgment On : 17<sup>th</sup> December, 2019

**Soumen Sen, J.**:- The appeal and the cross objection arising out of an order dated 14<sup>th</sup> September, 2017 passed by Mr. Justice Harish Tandon in W.P. No. 930 of 2016 by which the acquisition of property of the writ

petitioner by invoking Section 352(a) of the Kolkata Municipal Corporation Act, 1980 are considered and disposed of together.

The property in question originally belonged to the father of one Birinchi Bihari Shah, who executed a deed of settlement during his lifetime, settling the said property in favour of his son Birinchi Bihari Shah, who was then a minor. The land in question comprises a plot of land of more or less 2 bighas 18 kathas 6 chitaks and 40 square feet together with a bungalow and a tank. After the death of the settlor, till Birinchi Bihari Shah attained majority, the said property was managed and administered by his elder brother Banshi Bihari Shah and, during the aforesaid period, it was let out to the Arora Film Corporation. After the death of Banshi Behari Shah, Birinchi mutated his name as the owner in the assessment book of the Kolkata Municipal Corporation, and cleared all the municipal dues and taxes in respect of the property in question. The Kolkata Municipal Corporation also acknowledges by its letter dated 7<sup>th</sup> April, 2000 that there are no outstanding dues with regard to the property taxes for the property in question.

Birinchi was, all along, exercising his right as owner of the land and had paid off the municipal taxes whilst also remaining in possession of the property. In the writ petition, it is alleged that, during the year 2009, an attempt was made by the respondent authorities at the behest of some influential people of the locality to forcibly enter upon the said premises with intent to raise construction. In such a situation, a writ petition was filed by Birinchi, being W.P. No. 126 of 2009. In the said proceeding, the

Corporation did not file any affidavit-in-opposition. The writ petition was disposed of on 17<sup>th</sup> September, 2009. In absence of any affidavit-in-opposition, the writ court, whilst disposing of the writ petition, directed the Municipal Commissioner to hold an enquiry to ascertain whether the land of the writ petitioner had been encroached upon or not and whether the writ petitioner is in lawful possession of the land and building forming the subject-matter of the writ petition. The Corporation was, however, restrained from raising any construction over the said property. It is alleged by the writ petitioner that in or about July, 2010, the writ petitioner received information from local sources that the Corporation had changed the name of Birinchi Bihari from the category of owner and had inserted its name as the owner of the property in question. Thereafter, Birinchi, from a letter of intimation obtained by him, found that such change had taken place but the assessee number had remained the same. This has resulted in the filing of a second writ petition, being W.P. No. 981 of 2010, in which Birinchi not only prayed for correction of the entries made in the assessment record but also sought to restrain the Corporation from interfering with the peaceful possession of the said owner. The writ petition was disposed of on 8<sup>th</sup> January, 2015 recording the concession made on behalf of the Kolkata Municipal Corporation that they were unable to controvert the statements made in the writ petition.

It was observed in the order dated 8<sup>th</sup> January, 2015 that the Kolkata Municipal Corporation authorities could not place any material on record to establish its right to raise any construction on the said premises. The

Municipal Corporation was accordingly restrained by an order of perpetual injunction from giving any effect or further effect to the wrongful recording of its name as owner. The Corporation was directed to remove its men and materials from the premises concerned within two weeks from the date of communication of the said order.

It is significant to mention that in the order dated 8<sup>th</sup> January, 2018, the learned Single Judge has categorically recorded that the Corporation could not establish its right in the said property, and it was on such basis that the learned Single Judge has directed status quo ante. The order dated 8<sup>th</sup> January, 2015 was challenged in an intra-court appeal, being A.P.O. No. 51 of 2015, before the Division Bench of this Court. The Division Bench, on the basis of a plea raised by the Corporation that they could not disclose relevant documents showing acquisition of the property before the learned Single Judge in accordance with the law, stated that the Corporation was permitted to file an affidavit-in-opposition in W.P. No. 981 of 2010 upon payment of costs assessed at Rs. 50,000/-. On 11<sup>th</sup> August, 2016, W.P. No. 981 of 2010 was dismissed and was not pressed with liberty to file a fresh writ petition on the same cause of action. The said application was perhaps not pressed in view of subsequent development that had taken place and in view of the disclosure made by the Corporation before the appellate court. The writ petitioner felt that unless certain orders disclosed by the Corporation before the appellate court were not challenged in an appropriate proceeding, the writ petitioners may not get a complete relief for the pending writ application.

Thereafter, the writ petitioner filed the 3<sup>rd</sup> writ application, being W.P. No. 930 of 2016, in which the impugned order dated 14<sup>th</sup> September, 2017 was passed by Mr. Justice Harish Tandon. In the said writ petition, the writ petitioner not only challenged the mutation effected by the Corporation but also the purported acquisition. The contention of the writ petitioner before the learned Single Judge as well as before us is that the purported acquisition is bad, illegal and dehors the provision of Kolkata Municipal Corporation Act, 1980.

Birinchi Behari died on 17<sup>th</sup> February, 2015, leaving his last will and testament dated 4<sup>th</sup> November, 2014, which appointed the writ petitioner as the executor to the said will.

Before us, the Corporation has assailed the order of the learned Single Judge on the ground that, in the impugned order, the learned Single Judge has proceeded on the basis that the property in question can only be acquired by following the provisions of Section 535 read with Section 537 of the Kolkata Municipal Corporation Act and, irrespective of the purpose and nature of acquisition, the compensation has to be decided on the basis of the Land Acquisition Act, 1894.

Mr. Alok Kumar Ghosh, the learned counsel appearing on behalf of the Corporation, has submitted that the land was acquired by the Corporation in exercise of its powers under Section 352(a) of the Kolkata Municipal Corporation Act, and the compensation for such acquisition has to be determined in terms of Section 363 of the said Act and not under Section 537 of the Act.

Mr. Ghosh has drawn our attention to the order of acquisition dated 16<sup>th</sup> January, 1991 and submitted that it is clear from the said order issued by the Municipal Commissioner that the land in question was acquired under Section 352(a) of the Kolkata Municipal Corporation Act, 1980 read with Section 363 of the said Act for the purpose of opening a park for the use of general public of the locality. It is submitted that when such purpose is clearly stated in the order of acquisition and it conforms to the requirements of Section 352(a) of the said Act, the writ petitioners are only entitled to compensation under Section 363 of the said Act. It is thus submitted that the attempt to harmonise Section 352, 363 and 537 of the Kolkata Municipal Corporation Act, 1980 with a view to determine the compensation of the land in question is erroneous. It is submitted that the Act contemplates two kinds of acquisition and has laid down the mode and manner of determination of compensation separately for both the purposes. It is submitted that since the purpose of the acquisition in the instant case is for opening a public park for the benefit of the public-at-large, Section 537 of the Act, for the purpose of determination of compensation, cannot have any manner of application.

Mr. Partha Sarathi Sengupta, Senior Advocate, assisted by Mr. Utpal Bose, learned Senior Counsel appearing on behalf of the writ petitioners, has submitted that the municipal authority has no power to acquire the said land in absence of any agreement between the parties, and in the event of the petitioners unwilling to enter into such agreement, the only recourse left to the Corporation is the exercise of power under Section 537 of the Kolkata

Municipal Corporation Act along with the payment of compensation in terms of the Land Acquisition Act, 1894.

Mr. Sengupta has relied upon the Minutes of the Meeting of the Mayor-in-Council dated 13<sup>th</sup> December, 1990, where, in view of the dichotomy in Section 352(a) and 363(3) of the Kolkata Municipal Corporation Act, 1980, legal opinion was sought by the Chief Municipal Law Officer from one of the Senior Advocates, i.e. Mr. P.K. Ghosh. The said Senior Advocate had expressed his doubts about the exercise of power under Section 352(a) of the Act. The learned Senior Advocate had apparently highlighted the anomalies in the statute with regard to such acquisition. Our attention is drawn to the following remark of the Chief Municipal Law Officer from the Minutes dated 8<sup>th</sup> June 1990:

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

Mr. Sengupta submits that this view of the Chief Municipal Law Officer was placed before the Mayor-in-Council. It is submitted that once a legal opinion has been obtained which apparently does not authorise the Municipal Corporation to acquire the property in exercise of its power under

Section 352(a) of the Kolkata Municipal Corporation Act, unless the owner agrees to hand over the property voluntarily or under an agreement contemplated under Section 536 of the Act, the acquiring body needs to follow the provisions of the Land Acquisition Act, 1894 for the purpose of determination of compensation.

We find from the resolution dated 13<sup>th</sup> December, 1990 that the Mayor-in-Council had decided to take recourse to Section 352(a) of the Act to acquire the property and determine compensation under Section 363 of the Act. The observation justifying acquisition under Section 352(a) is:-

“352(a) acquire any land required for the purpose of opening, widening, extending or otherwise improving any public street, square, park or garden or of making a new one, together with any building standing upon such land.”

“Validity and virus of Section 353 and 363 have not yet been tested in Court. The legislature in its wisdom thought it fit to make these provisions for expeditious acquisition of lands at lower compensation for some specific purpose. So in my view these two Sections should be resorted to opinion of Mr. P.K. Ghosh, Advocate, notwithstanding.”

It was upon such consideration, and without waiting for a challenge being thrown to such exercise of power under Section 352(a) that the Mayor resolved as follows:

“(a) That having considered the proposal of Ch. V and S duly endorsed by D.M.C (Sr.), as in the ....., the Mayor in Council received that notice taken by the Mpl. Commissioner for acquisition of land acquiring about 2B 15 X 11Ch. 35 s.ft. (approx) at Premises no.1060, ..... Road in Ward No. 50 for opening out a park under Section 352 read with Section 363 of the C.M.C. Act, 1980 is approved.

(b) That D.M.C. (Sr.) through C.M.L.O & Ch. V & S to requested to take necessary action for taking possession of the aforesaid land as at (a) above.”



It appears that the Mayor has proceeded on the basis of the observation of the Chief Municipal Law Officer, dated 24<sup>th</sup> November, 1990 provided above. In the writ petition, there is no challenge to the *vires* of Section 352 of the Kolkata Municipal Corporation Act. Section 352-Section 363 forms part of Part VI, Ch. XXI of the Kolkata Municipal Corporation Act, 1980. It deals with town, building, land and land use controls. Chapter XXII of the said Act deals with streets and public places. Section 352 confers power to the Municipal Commissioner, subject to the other provisions of the Municipal Corporation Act, to acquire any land required for a park to be used by the public in general. Section 363 refers to the compensation to be paid by the Corporation for acquiring land for the construction of a public park. As opposed to this, Part VIII of Chapter XXXIII deals with acquisition and disposal of property by the Corporation. Section 537 deals with the procedure for when an immovable property cannot be acquired by agreement. It states that whenever the Corporation thinks that an immovable property is required to be acquired, the Municipal Commissioner, with the approval of the Mayor-in-Council and subject to the other provisions of the said Act, may make an application to the State Government. The State Government may, in its discretion, order proceedings to be undertaken for acquiring the said property on behalf of the Corporation as if such property were needed for public purposes within the meaning of the Land Acquisition Act, 1894.

For better understanding, Sections 352(a), 363, 535, 536 and 537 of the said Act are reproduced hereinbelow:

**“352 (a)** acquire any land required for the purpose of opening, widening, extending or otherwise improving any public street, square, park or garden or of making a new one, together with any building standing upon such land.”

**“363.** (1) Compensation shall be paid by the Corporation to the owner of any building or land acquired for a public street, square, park or garden under the provisions of this Chapter:

*Provided that any increase or decrease in the value of the remainder of the property, of which building or the land so acquired formed part, likely to accrue from the setting back to the regular line of a public street, shall be taken into consideration in determining the amount of such compensation.*

(2) *If any additional land, which will be included in the premises of any person permitted or required by an order under sub-section (2) of Section 360 to set forward a building to the regular line of a public street, belongs to the Corporation, such order shall be a sufficient conveyance to the owner of such land; and the price to be paid to the Corporation by the owner for such additional land the other terms and conditions of the conveyance shall be set forth in such order.*

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

(i) *for land or building with annual value determined at an amount not exceeding Rs.3000 in respect of the portion acquired. [Fifteen times the amount of the annual value]*

(ii) *for land or building with annual value determined at an amount exceeding Rs.3000 in respect of the portion acquired. [Rs.45,000 plus ten times the amount of the annual value in excess of Rs.3000].*

**“535.** Acquisition of property – *The Corporation shall, for the purposes of this Act, have power to acquire and hold movable and immovable property or any interest therein, whether within or outside the limits of Kolkata.”*

**“536.** Acquisition of immovable property by agreement – (1) *Whenever it is provided in this Act that the Municipal Commissioner may acquire, or whenever it is necessary or expedient for any purpose of this Act that the Municipal Commissioner shall acquire, any immovable property, such property may be acquired by the Municipal Commissioner on behalf of the Corporation by agreement on such terms and at such rates or prices or at rates or prices not exceeding such maxima as may be approved by the Mayor-in-Council either generally for any class of cases or specially in any particular case.*

(2) *Whenever, under any provision of this Act, the Municipal Commissioner is authorised to agree to pay the whole or any portion of the expenses of*

*acquiring any immovable property, he shall do so on such terms at such rates or prices or at rates or prices not exceeding such maxima as may be approved by the Mayor-in-Council either generally or in particular as aforesaid.*

*(3) The Municipal Commissioner may on behalf of the Corporation acquire by agreement any easement affecting any immovable property vested in the Corporation and the provisions of sub-sections (1) and (2) shall apply to such acquisition.”*

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

*(2) Whenever in application is made under sub-section (1) for the acquisition of land for the purpose of providing a new street or for widening or improving an existing street, it shall be lawful for the Municipal Commissioner to apply for the acquisition of such additional land immediately adjoining the land to be accupied by such new street or existing street as is required for the sites of buildings to be erected on either side of the street, and such additional land shall be deemed to be required for the purposes of this Act.*

*(3) For the purpose of acquisition of immovable property under this section, the Land Acquisition Act, 1894, shall be subject to the amendment that the market-value of any land or building to be acquired shall be deemed, for the purpose of sub-section (1) of section 23 of that Act, to be the market-value determined according to the disposition of such immovable property at the date of declaration under sub-section (1) of section 4 thereof in respect of such immovable property.*

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

The issue before us is with regard to the exercise of power by the Corporation under Section 352(a) for acquisition of the property in question

and whether the compensation should be determined under Section 363 or Section 537.

The mode of determination of compensation under the aforesaid two Sections is different. The compensation payable for land acquired under Section 352 attracts a lesser compensation than any land acquired under Section 537. According to the Act, determination of compensation for acquisition of land for a public park does not warrant fixation of compensation according to the market value of the land, and the only method required to be followed is what is mentioned in Section 367. Section 352 mentions that lands and buildings can be acquired for public streets and for public parking spaces. Land can be acquired for opening, widening, extending or otherwise making any public street, park or garden, or for making a new road together with any building standing upon such land. Although Section 535 says that the Corporation shall have the power to acquire and hold immovable property or any interest therein but must it do so, in exercise of power under Section 352 of the Kolkata Municipal Corporation Act, 1980 to give a lesser compensation?

Part VIII of the Kolkata Municipal Corporation Act, which deals with the property of the Corporation, has specifically and categorically laid down the procedure to be followed for acquisition and disposal of property. In Section 536, the acquisition of an immovable property can be by an agreement, failing which acquisition can only be made by approaching the State Government by the procedure prescribed under the Land Acquisition Act, 1894 as clearly stated in Section 537 of the said Act. We are in

agreement with Mr. Sengupta that for the purpose of determination of compensation for any of the purposes mentioned in Section 352(a) of the said Act, after property is acquired by an agreement, the provisions of Section 363 may be applied and could be the basis for determination of the compensation payable to the owner of the property. The immediate base price for the purpose of determination of compensation for acquisition of immovable property by agreement could be the amounts determined in accordance with Section 363(3) of the said Act, subject to any higher amount that the Mayor-in-Council may approve in a given case. On such interpretation, there is no requirement to declare Section 363 or Section 352(a) as *ultra vires*. However, the interpretation that Mr. Ghosh wants us to accept, would render the said Section 363 *ultra vires* as it would be in conflict with Article 14 and 300A of the Constitution of India.

Article 31(1) of the Constitution stated that no person could be deprived of his property without the authority of law. This provision has been repealed through the 44<sup>th</sup> Amendment, but it reappears as Article 300A. Article 31(2), as it stood before its abrogation, was based on three concepts, namely, (i) compulsory acquisition and requisitioning by the State, (ii) amount and (iii) public purpose. Before 1955, the word 'compensation' in Article 31(2) as it existed was not qualified by any adjective like just or adequate. Nevertheless, the courts took the position that such an omission was immaterial and that the word compensation standing alone by itself meant just and equivalent compensation for the interest in property acquired.

Between 1955-1971, the country has witnessed the judicial insistence on payment of full market value for the property acquired. The legislature possibly felt that this would place an onerous burden on the country's slender resources and would throw out of gear the professed socio-economic programme involving reconstruction of property relations. Therefore, the Constitution (4<sup>th</sup> Amendment) Act, 1955 amended Article 31(2) with a view to make the question of adequacy of compensation as non-justiciable. In order to prevent uncontrolled and unbridled discretion of an administrative officer to acquire and dispose of property, Article 300A of the Constitution of India and the provisions of the Land Acquisition Act, 1894 and now The Right to Fair Compensation and Transparency in the Land Acquisition, Rehabilitation and Resettlement Act, 2013 are required to be followed and adhered to. Property rights are essential for the survival of a democracy and therefore any dilution of the property right should be subject to Article 300A of the Constitution of India and the relevant laws in this regard. Though Article 300A is not a fundamental right any more, nevertheless, it in no uncertain terms states that no person shall be deprived of his property save by authority of law. It ensures that a person cannot be deprived of his property by executive fiat. The rights in property can be curtailed, abridged or modified by the State only by executing its legislative power.

The Kolkata Municipal Corporation Act, in recognition of the right under Article 300A of the Constitution of India, in Section 537, refers to the Land Acquisition Act, 1894 as the mode and procedure for acquisition of a property for a public purpose, when the property cannot be acquired by

agreement. The Corporation has not contended that the writ petitioner has voluntarily agreed to handover the property to the Corporation or that the acquisition of the property was made by agreement. These are the only two modes contemplated under the Act for the purpose of acquisition by the Corporation. Section 352(a) has to be read in conjunction with Section 535-537 of the said Act, otherwise any other interpretation would confer upon the executive an unbridled and unfettered power to acquire the property on the basis of its own whims and caprice. The Land Acquisition Act, 1894 and The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 provided the procedure for acquisition of property and the compensation required to be paid for such acquisition. In fact, the documents produced before us by Mr. Ghosh would show that before acquisition of property, two notices, one in vernacular and one in English were published in the 'Ganashakti' and 'Statesman' newspapers, both dated 26<sup>th</sup> March, 1990. It is in the nature of a public notice. In fact, the procedure adopted was akin to the procedure mentioned under the Land Acquisition Act but the power under which it was exercised was erroneous, so also was the manner in which it was tried to be acquired. There is a serious dispute whether the possession was in fact taken in terms of the said order of the Municipal Commissioner or not. However, it is seen from the notes put on 16.03.1991 that the possession was taken. The fact remains that no compensation has been paid as yet. The Corporation has further disclosed a letter allegedly written by the recorded owner on 14.11.1991 wherein it is categorically stated that the possession has not been taken. Though it appears from the noting that the possession was

taken way back in 1991 but the record maintained by the Corporation was not altered and / or corrected and in fact the Corporation continued to accept the property tax paid by the recorded owner in respect of the said property.

It is also significant to mention that in the year 2000 the Corporation has mutated the name of Birinchi Behari Shaw and realised all dues from him and till 2009 no due certificate was issued in his favour by the Assessment Department of the Corporation. The Assessment Department has also received the rates and taxes in respect of the property in question, until 2010, when they have, for the first time, recorded a change in the assessment roll as to the ownership of the property in question which had resulted in the filing of the second writ petition.

We are of the opinion that Section 536 to 537 are of wide amplitude and cover all cases of acquisition of land or buildings under the Act, including those made for the purpose of opening a park. It is also important to note that while acquisition under Section 537(3) would attract higher compensation, acquisition for the same purpose under Section 363 would attract payment of compensation on the basis of the annual value which is not at all consistent with the scheme of compensation under the Land Acquisition Act. If we accept the argument of Mr. Ghosh on the scope and ambit of Section 363, there will be two sets of compensation one more onerous than the other but for the same purpose. We are not unmindful of the fact that there may be two different provisions in an Act for acquisition of property but it has to be assessed in a given case as to why the



Commissioner cannot validly resort to the provision of Section 535, 536 or 537 for acquisition of the property for opening of park. We could not find any guideline as to when one set of provision should be given preference over the other and leaving it to the discretion of the executive authority would lead to violation of Article 14 and 300A of the Constitution of India. In a given circumstances it may be permissible to introduce a classification between acquisition for a given purpose and acquisition for all other purposes. In the instant case we are unable to find out what would be the “acquisition of other purposes than what is specified in Section 352 of the Kolkata Municipal Corporation Act, 1980”. It is also one of the relevant considerations for which we feel that the mode and procedure adopted by the corporation for acquiring the property cannot be supported. Under such circumstances we affirm the order under appeal. This order, however, shall not prevent the Corporation to acquire the property in accordance with law for the opening of a park. Since it appears that a portion of the land is claimed to be under the occupation of the Corporation which appears to be the reason for the earlier writ petition in the year 2009 the Corporation considering the present crowded sky line of the city and the dearth of public parks instead of allowing more sky scrappers to come up, causing more environmental pollution upon following the procedure either under Section 536 or Section 537 may acquire the said land for public purpose and not otherwise. The debate between adequacy of the amount payable on vesting or it should be a compensation based on market value is not relevant in the instant matter. The fact remains that Act contemplates acquisition by following the mode in Section 536 or Section 537 of the Act. The labyrinth of

the city is spotted with fume, dust and pollution and it requires more greeneries and oxygen for its survival. There cannot by any doubt the object for acquisition was noble but the manner in which it is sought to be achieved is unfair. The said process may be initiated and completed within five months from date. The Corporation must communicate its decision to the writ petitioner within two weeks from date and in the event the Corporation does not wish to acquire the property either in terms of Section 536 or Section 537 the Corporation shall soon thereafter but not later than 10 days from such decision make over the portion under its occupation to the last recorded owner of the property.

The cross objection against the order under appeal is that having returned a finding by the learned Single Judge that the mode and manner of acquisition dehors the provisions of the Act, the learned Single Judge, however, did not grant consequential relief of restoration of status quo ante, namely, restoration of the name of the writ petitioner in the assessment and municipal record of the Corporation. We have recorded earlier that in the event the Corporation did not take step either in terms of Section 536 and 537 of the Corporation Act within the stipulated period, the land should be returned to the last recorded owner of the property.

In view thereof the appeal and the cross appeal are disposed of with the aforesaid modification.

However there shall be no order as to costs.

Urgent Photostat copies shall be given to the parties on the usual undertakings.

**(Soumen Sen, J.)**

I agree.

**(Saugata Bhattacharyya, J.)**