

In the High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

C. O. No. 1232 of 2018

+

C.A.N. 3282 of 2018

Burdwan Development Authority

Vs.

Arifa Khatun and another

With

C.O. No. 4263 of 2017

+

C.A.N. 9971 of 2018

+

C.A.N. 3289 of 2018

Burdwan Development Authority

Vs.

Biswanath Pal and another

With

C.O. No.4264 of 2017

+

C.A.N. 3290 of 2018

+

C.A.N. 9972 of 2018

Burdwan Development Authority

Vs.

Biswanath Pal and another

With

C.O. No. 3809 of 2017
Shrachi Burdwan Developers Private Ltd.
Vs.
Otuba Khatun and others

With

C.O. No. 699 of 2018
+
C.A.N. 3287 of 2018

Burdwan Development Authority
Vs.
Biswanath Pal and another

With

C.O. No. 727 of 2018
Burdwan Development Authority
Vs.
Abdul Alim and others

With

C.O. No. 736 of 2018
+
C.A.N. 3285 of 2018
Burdwan Development Authority
Vs.
Abdul Alim and others

With

C.O. No. 737 of 2018
+

C.A.N. 3286 of 2018

Burdwan Development Authority

Vs.

Zamila Khatun and another

With

C.O. No. 783 of 2018

+

C.A.N. 3283 of 2018

State of West Bengal

Vs.

Arifa Khatun and another

With

C.O. No. 176 of 2018

+

C.A.N. 1375 of 2018

Burdwan Development Authority

Vs.

Arifa Khatun and another

With

C.O. No. 996 of 2018

Burdwan Development Authority

Vs.

Abdul Alim and another

With

C.O. No.1031 of 2018

State of West Bengal

Vs.

Abdul Alim and another

With

C.O. No. 1847 of 2018

Shrachi Burdwan Developers Private Limited

Vs.

Arifa Khatun and others

With

C.O. No. 1848 of 2018

Shrachi Burdwan Developers Private Limited

Vs.

Abdul Alim and others

With

C.O. No. 1850 of 2018

Shrachi Burdwan Developers Private Limited

Vs.

Abdul Alim and others

With

C.O. No. 1852 of 2018

Shrachi Burdwan Developers Private Limited

Vs.

Zamila Khatun and others

With

C.O. No. 1853 of 2018

Shrachi Burdwan Developers Private Limited

Vs.

Abdul Alim and others

With

C. O. No. 2885 of 2018

Burdwan Development Authority

Vs.

Salil Kumar Singha Roy and another

With

C. O. No. 2886 of 2018

Burdwan Development Authority

Vs.

Abdul Aziz and another

With

C. O. No. 2906 of 2018

Burdwan Development Authority

Vs.

Salil Kumar Singha Roy and another

With

C.O. No. 3795 of 2018

Burdwan Development Authority

Vs.

Abdul Aziz and another

With

C.O. No. 3798 of 2018

Burdwan Development Authority

Vs.

Salil Kumar Singha Roy and another

With

C.O. No. 3800 of 2018

Burdwan Development Authority

Vs.

Salil Kumar Singha Roy and another

With

C.O. No. 3236 of 2018

Burdwan Development Authority

-Vs.-

Abdul Alim and others

For the petitioner/BDA

:

Mr. Saptansu Basu

Mr. Arindam Banerjee,

Ms. Sanchari Chakraborty,

Mr. Soumik Chakraborty,

Mr. Sarosij Dasgupta

For the petitioner in

C.O. 3809 of 2017

:

Mr. Malay Kumar Ghosh,

Ms. Vineeta Meharia,

Mr. Kaushik Chowdhury,

Mr. Shounak Mitra,

Mr. Rishav Dutt,

Mr. Zulfiqar Ali Quaderi

For the opposite party

nos.1 & 2 in

C.O. No.3809 of 017 : Mr. Gopal Chandra Ghosh,
Mr. P. Rej

For the State in

C.O. No.4263 of 2017 : Mr. Tapan Kumar Mukherjee,
Mr. Somnath Naskar

For the State in

C.O. No.3795 of 2018 : Mr. Rabindra Narayan Dutta,
Mr. Hare Krishna Halder

For the State : Mr. Prasanta Kumar Giri

Hearing concluded on : 12.02.2020

Judgment on : 26.02.2020

Sabyasachi Bhattacharyya, J.:-

1. The present revisional applications arise out of the same land acquisition proceedings and as such have been clubbed together for hearing. The private opposite parties, being the award-holders in proceedings for enhancement of compensation under reference within the contemplation of Section 18 of the

Land Acquisition Act, 1894 (hereinafter referred to as the “LA Act”), obtained awards of enhancement in connection with the same acquisition proceedings. The Burdwan Development Authority (hereinafter referred to as the “BDA”) was the requiring body for whom the land-in-question was acquired from the land holders-private opposite parties.

2. The backdrop of the acquisition is that in June, 2004, the BDA issued a notice inviting expression of interest for choosing a private partner for implementation of a public-private partnership project for construction and development of a satellite township over an area of about 257.5 acres of land near Burdwan town. In response to such notice, Bengal Shrachi Developers Private Limited (hereinafter referred to as “BS”), a joint venture company, expressed interest to be an associate with the BDA for the project.
3. In or about April and May, 2005, the District Magistrate, Burdwan and Joint Secretary (Ex-Officio), Land and Land Reforms Department, issued twelve separate notifications under Section 4 of the LA Act, notifying the land required for such project. In or about December, 2005 and January, 2006, the Land and Land Reforms Department issued twelve separate declarations under Section 6 of the LA Act, in respect of such land.
4. BS entered into a development rights assignment agreement with Shrachi Burdwan Developers Private Limited (hereinafter referred to as “Shrachi”) on October 20, 2006 whereby and whereunder BS, alongwith an investor, namely

Xander Investment Holding VI Limited (a Mauritius-based company incorporated for the purpose of making investments in real estate in India as permitted under the extant regulatory regime), agreed to develop the said project through Shrachi, as a Special Purpose Vehicle (SPV). By the said agreement, BS assigned and transferred all its rights, entitlements and interest in the development of the said project to Shrachi.

5. On January 10, 2007, BS wrote a letter to BDA seeking permission to implement the project by forming an SPV with Xander, to which a written 'no objection' was communicated by the BDA on March 1, 2007.
6. The land was acquired by the State for the project with the BDA as the requiring body and on February 26, 2007 BDA handed over possession of 248.32 acres of land to BS who, in turn handed over possession thereof to Shrachi on March 15, 2007 in accordance with the agreement between them.
7. C.O. No. 3809 of 2017 has been preferred by Shrachi against an order dated August 23, 2017 whereby the Additional District Judge, First Court at Burdwan dismissed its application under Order I Rule 10, read with Section 151, of the Code of Civil Procedure for being added as a party-respondent in Land Acquisition Case No. 40 of 2010, which was a reference under Section 18 of the LA Act.

8. That apart, several orders were passed in the money execution cases filed to implement the various orders of enhancement on reference. By some of the orders, the functionaries of the local State administration were directed to appear before the executing court and file affidavits. The BDA filed applications under Section 151 of the Code of Civil Procedure challenging the maintainability of the execution cases on the ground that the awards passed on reference were null and void, hence inexecutable since Shrachi, a necessary party, was not impleaded at any stage of the proceedings. In aid of the aforesaid applications of the execution cases on the ground of nullity, the BDA also filed applications for stay of the execution proceedings, which were dismissed by the executing court concerned, in most cases with costs. At various stages, the executing court also issued various coercive directions against the officers of the Land Acquisition Department and the BDA for implementation of the awards passed on reference. Challenging such orders, the other applications under Article 227 of the Constitution, which have been taken up for hearing alongwith C.O. No. 3809 of 2017, were preferred. Shrachi filed several applications for being added in the said revisional applications as well.
9. Shrachi claims that it had been assigned development rights of the said acquired land as a private partner, by one Bengal Shrachi Housing Development Limited (hereinafter referred to as the "BS"). BS had entered

into an agreement with the BDA in the capacity of private partner in the acquisition procedure and had direct interest in the payments of compensation, which had been assigned to Shrachi, entitling Shrachi to be impleaded in the reference. It is argued that the acquisition was for BDA and there was an agreement between the BDA and BS dated March 8, 2006, whereby BS was taken in as a private partner and was to finance the development and construction of a township on the land to be acquired. BS was to act in the capacity of a private partner/developer/agent of BDA and as such had a direct interest in the compensation payable.

10. By a subsequent agreement dated October 20, 2006, BS assigned its rights vis-à-vis the acquisition proceeding referred to above, in favour of Shrachi.
11. The project for which the land was acquired was a Public Private Partnership for construction of a satellite township on the acquired land near Burdwan.
12. However, without impleading Shrachi, the compensation granted for the acquisition by the Collector was challenged by a group of land holders and references were made under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the "LA Act").
13. On February 26, 2007, BDA handed over possession of 248.32 acres of land to BS, which, in turn, handed over possession to Shrachi in accordance with the development rights assignment agreement dated October 20, 2006.

14. Meanwhile, BS had allegedly paid a sum of Rs. 22,52,58,575/- in aggregate to BDA towards land acquisition cost, as awarded by the Collector.
15. On September 5, 2008, BDA handed over possession of the balance portion of 6.420 acres of land to Shrachi and on September 24, 2008, Shrachi paid a sum of Rs. 1,40,10,700/- to BDA towards the second installment of premium in terms of the Memorandum of Agreement.
16. As recorded above, meanwhile, on January 10, 2007, BS had written a letter to BDA seeking permission to implement the project by forming a Special Purpose Vehicle (SPV) with M/s Xander Investment VI Ltd. On March 1, 2007, BDA wrote a letter to BS according a 'no-objection' to implement the project by forming such SPV, subject to observance of terms and conditions of the original agreement executed between BDA and BS. Shrachi was thus formed.
17. On August 27, 2010, a deed of lease was executed by BDA in favour of Shrachi granting a lease for 99 years in respect of 254.74 acres of land out of the said project land, to which BS was a confirming party.
18. Since Shrachi had not been impleaded in the land acquisition proceedings and the connected reference case despite claiming to be a necessary party thereto, in view of the public-private arrangement in respect of the project and the fact that compensation was actually being paid by it, Shrachi filed a Writ Petition bearing W.P. No. 9778 (W) of 2012 before this court.

19. On February 16, 2017, a co-ordinate bench of this court allowed the writ petition, holding that Shrachi was an interested person under the LA Act and setting aside the final orders/decrees made in four reference cases out of several, passed in connection with the same acquisition proceeding. The learned single Judge held inter alia that BS was a 'person interested' within the meaning of Section 3(b) of the LA Act in view of the indisputable facts of the case. Shrachi was also held to be a necessary party in all the reference cases under Section 18 of the LA Act, arising out of the awards made in the acquisition proceeding-in-question.
20. It was accordingly held that the orders of the reference court in the proceedings under Section 18 of the LA Act were void and *non est* in the eye of law, having violated principles of natural justice according to the learned single Judge, due to non-impleadment of Shrachi.
21. Before the aforesaid order dated February 16, 2017 was passed, however, the reference cases already stood disposed of.
22. It is argued on behalf of Shrachi that, in view of the findings rendered in the order dated February 16, 2017 in W.P. No. 9778 (W) of 2012, the final award was a nullity in law in the absence of Shrachi as a party.
23. Subsequently the land-losers preferred an appeal against the aforesaid order dated February 16, 2017, which was allowed by a Division Bench of this court

on September 11, 2019. In ultimate analysis, however, the Division Bench made several observations in the judgment, but did not conclusively decide on the question whether Shrachi was a person interested, dismissing the writ petition on the ground of the conduct of Shrachi in delaying to approach court. Apparently Shrachi preferred a Special Leave Petition against the judgment and order of the Division Bench, on which notice was issued by the Supreme Court.

24. Learned senior counsel appearing for Shrachi argues that the court below proceeded on an erroneous premise that Shrachi was a 'post-acquisition allottee', without assigning any reasons for such finding. It is argued that not only was Shrachi a private partner and not an 'allottee', Shrachi had entered into the fray by virtue of an assignment of the rights of BS prior to the completion of the process of acquisition and vesting and thus had come in at a pre-acquisition stage.

25. The judgment of the co-ordinate bench in W.P. No. 9778 (W) of 2012, reported at 2017(3) CLJ 472 [*Shrachi Burdwan Developers Pvt. Ltd. & Anr. vs. The State of West Bengal & Ors.*], is cited on behalf of Shrachi and it is argued that the facts were identical with the present case and the matter arose from the same acquisition proceeding; as such, the said judgment, rendering the awards null and deciding Shrachi to be a necessary party to the acquisition proceedings, was binding on the court below. The primary ratio in the said reported

judgment was that it was Shrachi who would be out of pocket if the compensation was enhanced and as such it had to be reckoned as a 'party interested' in the reference as well as the compensation proceedings.

26. However, in its written arguments, the petitioner Shrachi submits that FMA 887 of 2019 was preferred by the present private respondent against the judgment rendered in W.P. No. 9778 (W) of 2012, reported at 2017(3) CLJ 472. The said appeal was allowed by a Division Bench of this court vide judgment and order dated September 11, 2019, primarily on the ground that even if it was assumed that Shrachi might be seen as a person interested, the 'dismal' conduct of Shrachi in not pursuing necessary proceedings at the appropriate stage to protect its perceived interest, which disentitled it from obtaining the extraordinary reliefs sought from the writ court, as per the Division Bench. There were several observations made in the said judgment. The Division Bench held that it was not necessary to conclusively answer the question as to whether Shrachi, in its capacity as a person implementing the public project for which the land was acquired under the agreement with the requiring body, might be regarded as a person interested as per the definition in Section 3 (b) of the Act of 1894. Although it was held that if Shrachi had assailed any of the orders of enhancement in an appeal to this court, Shrachi might have been recognized as a person aggrieved by the enhancement and entitled to maintain the appeal with the leave of this court, the Division Bench went on

to observe that it was not necessary to conclusively pronounce on the aspect as to whether Shrachi, in its status of the person implementing the public project for which the land was acquired to be a party to the reference proceedings under Section 18 of the Act of 1894. However it was further held that neither the reference court nor the land losers were obliged to issue any notice of the reference proceedings to Shrachi. Yet, it is submitted by the petitioner, the Division Bench allowed the appeal and dismissed the writ petition, bearing W.P. No. 9778 (W) of 2012, “leaving the writ petitioners free to pursue whatever other remedies may be available to them in accordance with law”. Thus, learned counsel for Shrachi submits that the Division Bench judgment, reported at (2019)6 WBLR (Cal) 102, is not an authority or precedent for rejecting the present petition.

27. In this context, Shrachi relies on the following reported decisions:

- (i) (1901) AC 495 [*Quinn v. Leatham*]
- (ii) (1987)1 SCC 213 [*Ambica Quarry Works v. State of Gujarat & Ors.*]
- (iii) (2013) 15 SCC 414 [*ARASMETA CAPTIVE POWER COMPANY PRIVATE LIMITED & ANR. v. LAFARGE INDIA PRIVATE LIMITED*]

28. Shrachi preferred a Special Leave Petition (No. 29801 of 2019), on which notice was directed to be issued vide order dated January 6, 2020. The same, according to Shrachi, is still pending.

29. Learned counsel for Shrachi next submits that the impugned order refusing to implead Shrachi as a party was based on the premise that it was a post-acquisition allottee, on the basis of the judgment of *Satish Kumar Gupta v. State of Odisha*, reported at (2017) 4 SCC 740. However, it is argued that in the facts of the instant case, Shrachi (and its predecessor-in-interest BS) was partner in a public private partnership (PPP) with BDA prior to the acquisition and not merely a post-acquisition allottee. On behalf of the BDA, the requiring body, learned senior counsel argues that the entire consideration of the court below, as to Shrachi being a 'post-acquisition allottee', was erroneous. Vesting occurs, as per Section 16 of the LA Act, on the Collector having taken possession of the land-in-question. In the present case, since possession was taken by BDA, for the Government, on February 26, 2007 and handed over to BS on the same day, Shrachi could not be labelled as a post-acquisition allottee.

30. It is further argued that that the 'lease' entered into between the parties was actually for the implementation of the project. Hence, Shrachi was an integral part of the implementation of the project and consequentially was a (juristic) person interested in the compensation awarded.

31. By iterating the facts, as narrated above, learned senior counsel submits that BS assigned all its interests, rights and entitlements in development of the said project in favour of Shrachi by executing an agreement of assignment

dated October 20, 2006. Such agreement was accepted by BDA and Shrachi stepped into the shoes of BS as the developer of the project. Thereafter, all demands were raised by BDA on Shrachi, which had been making all payments to BDA, both towards annual lease rent and other expenditure incurred by BDA in connection with the project. BS had paid only the first instalment due to BDA before Shrachi took over.

32. As per the understanding and agreement between the parties, it is argued, Shrachi will be bound to pay any enhanced compensation in respect of acquisition of the concerned land. As such, the order of enhancement of compensation directly affects Shrachi, who would be out of pocket.
33. It is further argued that the definition of “person interested” in Section 3 (b) of the Land Acquisition Act is inclusive and includes all persons “claiming an interest in the compensation” to be made on account of acquisition of land under the LA Act. The Supreme Court, it is submitted, laid down the principle that a person “claiming an interest in compensation” would also include someone who would bear the higher compensation in the following cases:

(a) (1980) 3 SCC 223 (paragraphs 8, 14) [*Himalayan Tile and Marble (P) Ltd. v. Francis Victor Coutinho (Dead) by LRs.*]

(b) (1990) 3 SCC 617 (paragraph 3) [*Neelagangabai & Anr. v. State of Karnataka & Ors.*]

(c) (1995) 1 SCC 221 (paragraphs 12 to 14) [*Neyveli Lignite Corporation Ltd. v. Special Tahsildar (Land Acquisition) Neyveli and Ors.*]

34. It is argued that, in *Neyveli's Case (supra)*, the earlier decision in *Himalayan Tile (supra)* was considered and approved by necessary implication and held that a previous decision, reported at (1971) 3 SCC 223 [*Municipal Corporation of the City of Ahmedabad v. Chandulal Shamaldas Patel & Ors.*] was held not to be good law, by a three-Judges Bench. Again, in *U.P. Awas Evam Vikas Parishad v. Gyan Devi (Dead) by LRs & Ors.*, reported at AIR 1995 SC 724 (paragraphs 17 and 19), a five-Judges Bench, in the majority decision of 4:1, considered and, in effect, approved *Himalayan Tile (supra)* and held that the Bench was unable to endorse the view taken in *Municipal Corporation of the City of Ahmedabad (supra)*.

35. It is further argued that in *Union of India v. Sher Singh* [(1993) 1 SCC 608], *Municipal Corporation of the City of Ahmedabad (supra)* was frowned upon since the same had not considered the definition of "person interested" in Section 3 (b) of the LA Act. Although *P.H. Harijan v. State of Karnataka* [(2015) 10 SCC 469] finds mention of *U.P. Awas (supra)*, the same was not dealt with.

36. That apart, the BDA submits that although in *Satish Kumar Gupta v. State of Haryana*, reported at (2017) 4 SCC 760 it has been held that a mere post acquisition allottee is not a “person interested” within the meaning of the LA Act, the said ratio is not applicable in the present case as Shrachi cannot be dubbed as a mere post acquisition allottee.
37. Hence, learned Senior Counsel for the BDA submits that the orders and final awards of the reference court in the reference proceedings, without impleading Shrachi, are void and *non est* in the eye of law, being rendered in violation of Natural Justice. Consequentially the various orders impugned in the several revisional applications, passed in connection with the execution cases filed to implement the void awards are also bad in law, since no execution was leviable on such void awards.
38. That apart, it is argued that the order challenged in C.O. No. 3236 of 2018, dated August 29, 2018, whereby the District Magistrate/Collector, Purba Bardhaman was directed either to release the decretal sum to the land-losers or to appear in person on September 17, 2018 was additionally without jurisdiction, since no copy of the connected application under Section 51(C), read with Order XXI Rule 30 and Section 151 of the Code of Civil Procedure was allegedly served on the BDA.
39. The other revisional applications have also been filed in connection with the said execution cases, mostly refusing to stay such proceedings or passing

coercive directions to implement the awards which, according to the BDA, are null and void.

40. Learned counsel appearing for the private opposite parties/land-losers argues that it is evident from the notice inviting expression of interest issued by the BDA that the same was merely an invitation seeking funds for the project-in-question. The cost of acquisition was to be paid to the BDA only after selection and the difference between the market value of the land and the cost of land acquisition would have to be paid to the BDA thereafter, as per the schedule of payments, which was to be fixed after mutual discussion. The private partner was to pay the mutually agreed share of profits generated from the project, after deduction of all costs and incidentals, to the BDA according to the mutually acceptable schedule. Hence, the agreement was only for sharing the profits, on which consideration the 'private partner', be it BS or Shrachi, was only to provide the funds for the acquisition, whereas BDA was the requiring body and the authority in charge of the acquisition.

41. It is further argued on the basis of the said notice that as per clause (h) thereof, no alienation, transfer, sub-division or assignment of the property would be permissible without the express consent of the BDA.

42. Learned counsel for the land-losers next refers to the terms of reference for housing projects, Code HS-1 and HS-2, which was to be a part of the expression of interest. Clause (a) thereof also provided that the selected

private partner would have to pay the cost of land to the BDA and the actual cost of acquisition, together with applicable incidentals, immediately after selection. As such, all payments were to be channelized through the BDA, the latter being the 'person interested' and the private partner being a mere financier.

43. Referring further to a communication from the Executive Officer of BDA to BS dated July 30, 2004 (annexure "RR-2" to the affidavit-in-reply of the petitioner Shrachi) it is submitted that, as per clause 5 thereof, idle money, if any, would be invested as a Term Deposit with any Nationalized Bank at Burdwan and the interest accrued thereupon would be liable to be adjusted against the financial offer of the private partner to the BDA, after mutual discussion.
44. It is argued that BDA was the requiring body and Shrachi only a financier. As per the communication dated May 11, 2005 from the Deputy Secretary to the Government of West Bengal to the Collector, Burdwan ("RR-6" to the affidavit-in-reply), the acquisition was to be under the BDA.
45. Even as per the Notification under Section 4 of the LA Act in the Kolkata Gazette Extraordinary, published on April 20, 2005, it was stated that the land-in-question was likely to be taken by the Government at public expenses for a public purpose, namely, for setting up a satellite township for Burdwan town, by undertaking land development for creation of public infrastructure.

46. Placing reliance on clause (l) of paragraph 3 of the affidavit-in-opposition filed by the BDA in W.P. No. 16280(W) of 2005, learned counsel for the land-losers argues that the BDA admitted that the acquisition-in-question was at the expense of BDA, in the form of a 'requiring body', and that BDA had raised funds with the help of private participation in implementing the aforesaid public purpose. The respondent no. 4 therein was described as a private party who had agreed to construct and develop the township in accordance with the terms and conditions provided by the BDA. The right of overall supervision of the project was retained by the BDA as per its own admission in the said affidavit-in-opposition, just as the marketing and the overall control of the project were.
47. It was categorically averred in the said opposition that by a Memorandum of Understanding dated March 8, 2006, BDA had appointed BS as its private partner for development of the land.
48. In clause (q) of paragraph 3 of the said affidavit, it was reiterated that the cost of acquisition was being entirely borne by BDA for the public purpose of developing a township besides housing and a hospital, a school and other amenities, generating funds through private participation.
49. Clause (t) of the same paragraph stated that the entire compensation had been made over by the BDA to the State of West Bengal, the latter having paid such

compensation to the persons whose lands had been acquired. It was reiterated that the BDA had paid the compensation in its entirety.

50. It was denied in categorical terms in paragraph no. 6 of the opposition that the compensation had not come out of the public revenue, but stated that the entire compensation had been paid by the BDA and received by the persons concerned by way of cheques issued by the State of West Bengal through the LA Collector.

51. Apart from such specific admission by the BDA as to the nature of the project being public and the revenue having been raised by the BDA, which had paid the compensation entirely, learned counsel for the land-losers/opposite parties relies on the findings of another co-ordinate bench of this court in the judgment dated February 23, 2007 passed in W.P. No. 16280(W) of 2005 [*Paschim Burdwan Krishi Kalyan Samiti & Ors. vs. the State of West Bengal & Ors.*] for the proposition that there was no reason to say that the acquisition was not for a public purpose. The findings referred to are as follows:

52. As such, the said order of this court, which has attained finality, categorically held that the compensation paid was wholly out of public revenues and that the land had been acquired for public purpose. The compensation was, thus, admittedly paid by the BDA, only raising funds for such purpose from the private party being respondent no.4 therein, namely, BS. Shrichi was a mere

assignee of BS in the development project and as such could not have any interest worth impleadment in the compensation proceedings.

53. Next relying on the relevant declaration under Section 276 of the LA Act, published in the Kolkata Gazette, Extraordinary dated February 10, 2006 (the declaration being of January 31, 2006) learned counsel for the land-losers/opposite parties pointed out that the land was needed for a public purpose, for creation of a public infrastructure, at public expense. Thus, it is argued, it is beyond all reasonable doubt that neither BS nor Shrichi, who were private juristic entities, could have any interest in the acquisition proceeding and consequentially the compensation or the reference proceeding in connection therewith. The only interested parties would be the State Government, the requiring body (BDA) and/or the land-losers.

54. Learned counsel for the land-losers argues on the basis of the provisions of the Memorandum of Agreement between the BDA and BS dated March 8, 2006 that, as per clause 1 thereof, BS was only a private partner/developer/agent for the purpose of development and construction of the proposed township.

55. Clause 2 thereof provided that the project land was to be acquired by the Authority (BDA) free from all encumbrances and full compensation as determined by the LA Collector would be paid to the individual land owner/owners.

56. Clause 3(g) of the Memorandum stipulated that BS was to take care of all technical, financial matters “other than land acquisition”, in consultation with the Authority (BDA), as may be necessary for implementation of the project.
57. Clause 5 provided that the Company (BS) should pay the actual cost of acquisition of the land to the Authority (BDA).
58. Clause 6 provided for BS paying a premium of Rs.1.65 lakh per acre of project land to the authority. Clause 7 authorized the company (BS) to raise necessary finances including from HUDCO or any other authority, subject to the condition that the company should repay such liability at the earliest opportunity.
59. Clause 11 of the Memorandum provided that, in addition to the premium payable to the company, the lessees would pay the annual lease rent to the Authority (BDA).
60. Hence, it is argued that BS was only a developer/financer and had no role to play in the acquisition proceeding, apart from the finance and post-acquisition development.
61. Placing reliance on Section 3(b) of the LA Act, learned counsel argues that the expression “person interested” includes all persons claiming an interest in compensation to be made on account of the acquisition of land.

62. Here, the compensation was payable by BDA, the requiring body and BS was only to finance prior to such acquisition and undertake development post-acquisition, without having any iota of interest in the acquisition/compensation itself.
63. BS, and its assignee Shrachi, were only to finance the project, which liability was without any string attached to the quantum of compensation.
64. Learned counsel for the land-losers/opposite parties places the scheme of the LA Act, in particular Section 4, pertaining to Notification, Section 5A, which envisages hearing of objection and Section 6, relating to declaration.
65. The second proviso to Section 6 of the LA Act stipulates that there will be no declaration if the acquisition was not out of public revenues, wholly or partly.
66. Thus, in the light of the admission of BDA in its affidavit-in-opposition in W.P. No. 16280(W) of 2005 and by virtue of the order passed therein, it was settled that the revenue raised for acquisition of the land-in-question was public revenue, which resulted in the declaration under Section 6 being issued. Unless it was a public project, there could not arise any question of a declaration under Section 6 and, it is argued, this by itself unerringly indicates that the private partners, being either BS or Shrachi, had no role whatsoever to play in the acquisition or compensation proceedings.

67. The land-losers further argue that BS and Shrachi had entered into an agreement for assignment of the development rights in the property. BDA, as per such agreement, remained the 'owner' and Shrachi, the 'developer' in respect of the property. The assignment of development rights to it post-acquisition, could not also entitle Shrachi to be impleaded in the compensation proceedings or the connected references. As per clause 3.6 of the development rights assignment agreement dated October 20, 2006 between BS and Shrachi, the consideration was ultimately payable by BS to BDA or other authorities on behalf of the BDA for acquisition of the development rights. BS was to furnish to the SPV all details of amounts paid and payable. Hence, all the payments were channelized through BDA and the SPV could not be arrogated to the status of a 'person interested'.

68. Relying on the supplementary affidavit of the petitioner used in this court, it is argued that BDA got possession of the land-in-question for the Government on February 26, 2007 and handed over the land to BS on the same day. Section 16 of the LA Act provides that, upon possession being taken by Collector after the award under Section 11, the land vests absolutely in the Government, free from all encumbrances.

69. This apart, the tripartite lease deed dated August 27, 2010 (for 99 years) specified that Shrachi was a lessee and BDA a lessor, BS being the confirming party.

70. The said indenture, it was provided therein, constituted the entire agreement between the parties and superseded all previous documents.
71. Thus, learned counsel for the land-losers/private opposite parties argues that the only parties interested in the acquisition and/or compensation and/or reference proceedings were the State of West Bengal, the land-losers and the BDA and neither Shrachi nor BS or any other financier, for that matter.
72. Learned counsel for the private opposite parties/land-losers places reliance on a judgment reported at AIR 1988 SC 2139 [*Hindu Kanya Maha Vidyalaya, Jind and another vs. Municipal Committee, Jind and others*]. It was held therein that indisputably the land-in-question was not acquired for the purpose of the appellants: instead the land was acquired for the Municipal Committee for the purpose of developing its Scheme No. 5. After the declaration of award, the Municipal Committee took possession of the land and thereafter transferred a portion of the same to the appellants under an agreement. In these circumstances it was held that the appellants were not interested persons and had no right to question the award.
73. Learned counsel for the land-losers relies on a judgment reported at AIR 1965 SC 427 [*Shyam Behari and others vs. State of Madhya Pradesh and others*] for the proposition that no declaration under the proviso to Section 6(1) for a public purpose can be made unless whole or part of the compensation of the property to be acquired is to come out of the public revenues or some fund

controlled and managed by a local authority. In the present cases, since the acquisition was held by this court in W.P. No.16280(W) of 2005 to be for public purpose at public expenses, and expenses have been entirely paid by the BDA, it is clear that the compensation has to be paid out of the fund controlled and managed by BDA, the requiring body, irrespective of the independent agreement between BDA and Shrachi or its predecessor-in-interest, BS. In fact, BDA has deposited the money with the State, which is the acquiring authority, in terms of the declaration.

74. Learned counsel then relies on *State of West Bengal vs. P.N. Talukdar*, reported at AIR 1965 SC 646, wherein it was held that since the land acquired for Ramkrishna Mission was at the expense of Ramakrishna Mission itself, publishing a declaration under Section 6 that it was for a public purpose was invalid.

75. In *Pratibha Nema and others vs. State of M.P. and others*, reported at AIR 2003 SC 3140, it was explained that the expression “the fund controlled and managed by authority”, in the context, meant that the advance lease premium given to the authority by a company, utilized for payment towards acquisition cost for public purpose by the authority, satisfied the second proviso to Section 6 and acquisition cannot be said to be not for public purpose, once such money credited to the account of the authority becomes public money.

76. In 1996 SCALE (6) 1 [*Naihati Municipality and Ors. vs. Chinmoyee Mukherjee and Ors.*], it was held that the High Court was not right in holding that the amount had not become part of funds managed or controlled by local authority within the meaning of the second proviso of Section 6(1) of the LA Act. In the said case, money was deposited by the Hawkers' Union to the Municipality for acquiring land for public purpose for rehabilitation of the hawkers.
77. Shrachi, it is submitted, has no concern with the process of acquisition, as by agreement it has been excluded from the acquisition part itself. Hence, as per the law laid down in *Satish Kumar Gupta vs. State of Haryana*, reported at (2017) 4 SCC 760, once a land vested in the State after award and possession is taken, acquisition is complete and the transferee from the State is not concerned with the process of acquisition. In the said case, the Supreme Court held that a post-acquisition allottee cannot be heard by the reference court.
78. Although it was argued by Shrachi that Shrachi or its predecessor BS was associated with BDA in respect of the project from before execution of the formal agreement dated March 8, 2006, after publication of the declaration under Section 6 of the LA Act, and it in fact became the project partner prior to acquisition of the land and cannot be said to be a post-acquisition allottee, the contractual relation of Shrachi with BDA came into existence only on

August 27, 2010 when the lease was made after the acquisition was completed on February 26, 2007.

79. In the said case, the Supreme Court negated the High Court's view that the principle behind giving right of representation to a local authority or a company, whose benefit the land is acquired for, can also be applied to any person who is liable to pay the enhanced compensation amount, treating such person to be the "person interested" under Section 3(b) of the LA Act. The Supreme Court held that a person who is the allottee of acquired land or even a substantial portion thereof may not be regarded as a person interested unless the land had been acquired for the benefit of such person. In the instant case, Shrachi was not the requiring party and certainly an allottee of acquired land.

80. While distinguishing *Himalayan Tiles (supra)*, it is submitted that the land was acquired for the purpose of Himalayan Tiles, a company and not for public purpose and on the basis of an agreement with the Government under Section 41 of the Act, it was bound to pay the compensation. In the case at hand, however, the land has not been acquired for benefit of BS and/or Shrachi, nor is there any agreement under Section 41 of the LA Act between the Government and those entities. No agreement other than Section 41 and Section 43 of the LA Act are recognized under the Act.

81. In the Constitution Bench in *Gyan Devi's case (supra)*, the Supreme Court virtually overruled the view taken by the Apex Court in *Himalayan Tiles (supra)*. Both the majority and minority views of the bench did not recognize the requiring body as a person interested under Section 3(b) of the LA Act. Therefore, neither the BDA nor its partner Shrachi can be a “person interested”.
82. In the judgment reported at AIR 1988 SC 2139 [*Hindu Kanya Maha Vidyalyaya, Jind vs. Municipal Committee, Jind*], it was held that the land was not acquired for the purpose of the appellant and, therefore, even if it was agreed that in case compensation was enhanced, the Hindu Kanya, being the transferee after acquisition, would be liable to bear the same, it was not a “person interested”.
83. The constitution bench, in *Gyan Devi's case (supra)*, the Supreme Court held that the requiring body is a proper party but not a necessary party. Therefore, neither the BDA nor Shrachi, as a partner of BDA, are necessary parties to the reference case. Though the BDA is a proper party under Section 50, Shrachi cannot be a party at all, being a third party both to the acquisition and the reference proceedings. So BDA should not be allowed to project a third-party's right in the execution process [*Bank of Baroda vs. R.M. Patwa and another – AIR 1996 SC 1662*].
84. In *P.H. Harijan (supra)*, it was held that the allottee of the land by the State Government acquired for a public purpose does not make such allottee a

beneficiary or a person interested within the meaning of Section 3(b) of the LA Act. In the present cases, Shrachi was not a requiring party, nor was the property acquired for its benefit but chosen for implementation of the project in association with BDA under the latter's supervision, subject to its payment of cost of acquisition to BDA.

85. Although the petitioners relied on the order passed in W.P. No.9778(W) of 2012, such view was negatived in *Satish Kumar Gupta (supra)* by the Supreme Court. Moreover, the said judgment and order dated February 16, 2017 was reversed in FMA No.887 of 2019 by a Division Bench of this court on September 4, 2019, being reported at (2019) 6 WBLR (Cal) 102 [*Abdul Aziz and others vs. Shrachi Burdwan Developers Private Limited and others*]. It is argued that, from the said judgment of the Division Bench, it will appear that all questions raised in the present revisional applications were answered, holding that Shrachi is not a "person interested" as the land had not been acquired for its benefits or at its instance. In paragraph nos. 46 to 49 of the said Division Bench judgment, the stand of the BDA and the distinction between an allottee of land acquired for any public purpose and the person for whose benefit the land is acquired have been distinguished.

86. Admittedly, the BDA is the public partner and Shrachi the private partner under the PPP model in the venture. It is also admitted that BDA was a party to all the reference proceedings. As such, BDA should also be deemed to

represent the interest of the private partner by following the law of partnership and doctrine of representation.

87. Learned counsel for the land-losers next cites a judgment reported at *AIR 2016 SC 4156 [Kedar Nath Yadav vs. State of West Bengal & others]*. The said judgment elaborately discussed about acquisition of lands for public purpose. By placing reliance on the said judgment, learned counsel argues that Section 3(f), in its concluding lines, provides that the expression “public purpose” does not include acquisition of land for Companies. As such, it is submitted that the present acquisition was for public purpose, as held by a co-ordinate bench of this court previously as well as admitted by the BDA. Hence, Shrachi or BS could not be persons interested in the acquisition within the contemplation of the LA Act.

88. The next judgment cited by the private opposite parties is of *Satish Kumar Gupta and others vs. State of Haryana and others* reported at (2017) 4 SCC 760. The same is relied on for the proposition that post-acquisition allottees of land are neither necessary nor proper parties, nor have any locus to be heard in the matter of determination of compensation.

89. Hence, on the strength of the said judgments, it is argued that neither Shrachi nor BS could claim to be interested persons in the acquisition and/or compensation. Hence, the order passed under reference under Section 18 of the LA Act as well as the initial compensation granted were valid in the eye of

law, even without impleadment of Shrachi. Section 50 of the LA Act, it is argued, provides that in case of acquisition at the cost of any fund controlled or managed by a local authority, such local authority and in case cost is provided by a company, such company may appear and adduce evidence for the purpose of determination of compensation amount.

90. To decide the matter, first we have to consider the exact definition of “person interested” as contemplated in the LA Act. Section 3(b) defines the expression “person interested” as to include all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land.

91. As per the clear language of the concerned section, the interest which the person has to claim pertains not to the acquisition proceeding simpliciter but in the *compensation to be made on account of the acquisition of land* under the LA Act.

92. Section 18 of the LA Act, on the other hand, contemplates that any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the court, whether his objection be to the measurement of the land, the amount of compensation, the persons to whom it is payable or apportionment of the compensation among the “persons interested”.

93. Section 20 of the LA Act envisages notice to be served on not only the applicant or, if the objection is in regard to the area of the land or to the amount of compensation, the Collector, but on all persons interested in the objection except such (if any) of them as have consented without protest to receive payment of the compensation awarded. Such inclusion of all “persons interested” in Section 20(b), read in conjunction with the definition of “person interested” in Section 3(b) indicate that the interest of the person has to be not in the acquisition proceeding itself but in the compensation to be made on account of the acquisition of land.
94. The arguments sought to be advanced on behalf of the land-losers revolves around the proposition that if the land was acquired for a public purpose, the private partner of the requiring body could not be a person interested, since its interest was only restricted to the post-acquisition development of the property and, at best, to financing the BDA, which is the requiring authority, for the quantum of such compensation.
95. Seen in the context of the agreement between the parties, the concept of ‘public purpose’ cannot restrict the interpretation of the term ‘person interested’, because of the simple reason that the Act contemplates all persons interested in the compensation, meaning thereby also the quantum of compensation, and not to the acquisition proceeding itself.

96. The agreements between BS and BDA, prior to acquisition, and subsequently Shrachi and BDA, the latter having stepped into the shoes of BS, goes on to show that Shrachi and BS were directly interested in the quantum of compensation, because they would be the entities who would be out of pocket in that regard.
97. 'Interest in compensation' cannot be equated with interest in the acquisition process itself but can relate to the quantum of compensation, which was to be paid by the BS first and then Shrachi.
98. As such, irrespective of the purpose of the acquisition being public and the funds being controlled by the BDA, which confers a public character to the acquisition, such qualification cannot be a yardstick for ascertaining whether Shrachi was a person interested for the purpose of paying compensation.
99. It is clear as daylight that in the event the amount of compensation was enhanced, as done in the present cases, Shrachi had to be considered as a necessary party, since it was evidently interested in the quantum of compensation, the burden of which had to be borne ultimately by Shrachi. Despite BDA being the requiring party, if the intention of the legislature was to confine 'persons interested' to the requiring body or the land-losers and/or the Government, the language used in Section 3(b) and Section 20(b) would not be so comprehensive as to bring within its fold all persons interested in

the compensation (which includes its quantum) itself, if it arises from an acquisition proceeding.

100. As such, it may very well be that an entity is interested in the compensation but not directly in the acquisition proceeding, which also comes within the purview of person interested.

101. Seen in such light, an exploration of the concerned contract between the BDA and Shrachi, dated March 8, 2006, by which Shrachi stepped into the shoes of BS, which had already acquired an interest in the compensation by its pre-acquisition agreement with the BDA, had a dual role in the acquisition process. One such role was that of a developer, which would construct and develop a satellite township post-acquisition and, on the other hand, also as the entity which would pay the amount of compensation, albeit through BDA. Such a *modus operandi* would at the same time make the acquisition for public purpose, since BDA was the immediate requiring authority and the payment of compensation was routed through BDA, but in the same breath, Shrachi had a positive role to play in such process, having paid the amount of compensation, although the same was channelized through BDA. In such a situation, there is no conflict between the purpose of the acquisition being public, since the requiring authority was spending the funds, and, at the same time, Shrachi being a person interested, since it was the source of the funding which was merely routed through BDA.

102. Such second role of Shrachi, as the payer of compensation, conferred upon it an interest in the quantum of compensation, even if not the acquisition proceeding itself, which are distinguished by virtue of the definition of “person interested” under Section 3(b) of the LA Act itself.
103. The Division Bench judgment of this court, which set aside the judgment of the coordinate Bench wherein Shrachi was held to be a ‘person interested’, itself recorded that the issue as regards whether Shrachi was a person interested, was not decided therein. The ultimate analysis of the Division Bench was that, even assuming that Shrachi might be seen as a person interested, but due to its ‘dismal’ conduct in not pursuing necessary proceedings at the appropriate stage to protect its perceived interest, it was disentitled from obtaining the extraordinary reliefs sought from the writ court.
104. However, the scope of the present revisional applications and the connected applications for addition of party is somewhat different from that of the writ jurisdiction of this court. Under Article 227, it is not an extraordinary relief sought from this court in the nature of violation of fundamental rights or legal rights but the veracity of the action of the reference court is under scrutiny under the supervisory jurisdiction of this court. Even if Shrachi was not entitled to protection of the writ court due to its apparent delay in approaching the court, there were several observations made in the Division

Bench judgment itself which might have entitled it to approach the reference court.

105. As far as the judgments cited by the land-losers are concerned, the line of distinction sought to be drawn is primarily on the project being for a public purpose, which has no direct nexus with the interest of Shrachi in the present cases, since it had every interest in the compensation payable. As such, the embargo in clause 3(g) of the memorandum of agreement between the BDA and BS dated March 8, 2006, which permitted BS to take care of all technical and financial matters "other than land acquisition", as may be necessary for implementation of the project, makes Shrachi, which stepped into the shoes of BS, a person interested in the compensation payable, due to its liability as to financial matters as contemplated in clause 3(g), although it may not be otherwise interested in the land acquisition proceeding itself.

106. Clause 5 of the said memorandum, on the other hand, fixes liability on BS, which was inherited by Shrachi, to pay the actual cost of acquisition of the land. Irrespective of the fact that BS, and thereafter Shrachi, had to make the payment to BDA, however, such payment obviously created an interest in compensation to be made on account of the acquisition of land, although not a direct interest in the acquisition proceeding itself. As such, mixing up the acquisition proceeding itself and the compensation payable therefor is not the proper approach to interpret the definition of person interested in Section 3(b)

and Section 20(b) of the LA Act. Most of the judgments cited by the land-losers, are focused on post-acquisition allottees not being interested persons within the contemplation of Section 3(b). However, in the present cases, BS was involved in the process of financing BDA for the compensation, which liability was inherited by Shrachi, prior to commencement of the acquisition process, let alone its completion.

107. As such, first BS and then Shrachi were very much interested in the fate of the proceeding for enhancement of compensation under Section 18 of the LA Act, as corroborated by Section 20(b) of the said Act. BS and Shrachi were not mere post-acquisition allottees but had a direct interest in the compensation payable for the acquisition process. Amid the conflicting decisions of the Supreme Court, the highlights of the judgments cited by the land-losers were on the nature of the purpose of acquisition. Some of the other judgments cited by the land-losers focused on the interpretation of 'public revenue' which resulted in the declaration under Section 6 of the LA Act being issued.

108. However, the decisions cited by the BDA and Shrachi focused the spotlight on the interest of the person concerned in the compensation itself, be it routed through a local authority for a public project or for acquisition by a company. Irrespective of the nature of the funding being public or private, or the "public revenue" having conferred validity on the notice under Section 6 of the LA Act for a public project, the only yardstick which has to be applied for

ascertaining whether Shrachi was a necessary party to the reference proceedings under Section 18 of the LA Act was whether it had any interest in payment of compensation for the acquisition process, and not the acquisition process itself. As per the agreements cited by the parties, BDA had made it clear that it was being funded by first the BS and then Shrachi and had independent agreements with both of them in that regard. Hence, it is obvious that the question which was not conclusively determined by the Division Bench judgment of this court, as referred to earlier, has to go in favour of Shrachi.

109. On the basis of the aforesaid considerations and the cited judgments, Shrachi was definitely a necessary party to the reference proceeding itself, the fate of which had a direct impact on the compensation payable, in which Shrachi was the juristic entity which was more interested than BDA, since it was Shrachi who had to bear the brunt of the enhancement and BDA would only channelize such funds, conferring on the funds a public character. The interest of Shrachi in the compensation or its quantum, as envisaged under Section 3(b) and Section 20(b) of the LA Act cannot be measured merely by its interest in the acquisition proceeding itself. Leaving aside the post-allotment development interest of Shrachi, which may not be a relevant factor in the present context, its pre-acquisition role and intra-acquisition liability of payment of compensation made it an absolutely necessary party to the

reference proceeding, whereby compensation was actually increased, which would go out of the pocket of Shrachi and not the BDA.

110. To ascertain whether a juristic entity is a 'person interested', one has to see through the process to the source of finance and not merely the paying hands, which unerringly point to Shrachi being more interested in compensation even than BDA, whereas BDA might be arguably a more interested party in the acquisition proceeding itself.

111. Thus, the awards passed in all the reference proceedings, in connection with which the respective orders in the execution cases, challenged by the present revisional applications, were null and void in the eye of law in view of the non-joinder of Shrachi, which was a necessary party to such proceedings, thereby rendering the execution cases themselves and all orders passed therein void in the eye of law.

112. In the above perspective, all the applications made by Shrachi for addition of party, in some of the revisional applications, are hereby allowed, since Shrachi has a positive and direct interest in the compensation and consequentially the fate of the revisional applications.

113. In view of the aforesaid findings, all the revisional applications which are taken up for hearing together, are allowed, thereby setting aside the orders impugned therein and holding that the reference awards, enhancing the

amount of compensation, were null and void in the eye of law, since those were passed without impleading Shrachi, a necessary party due to its direct interest in the compensation to be made on account of the acquisition of land, as envisaged in Section 3(b) of the LA Act. However, this will not prevent the land-losers from initiating fresh proceedings under Section 18 of the LA Act, impleading Shrachi as a party.

114. There will be no order as to costs.

115. Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.



(Sabyasachi Bhattacharyya, J.)