CASE NO.:
Appeal (civil) 6756 of 2003

PETITIONER:
Daulat Singh Surana & Others

RESPONDENT:
First Land Acquisition Collector & Others

DATE OF JUDGMENT: 13/11/2006

BENCH:
ASHOK BHAN & DALVEER BHANDARI

JUDGMENT:
J U D G M E N T

Dalveer Bhandari,J.

This appeal is directed against the judgment of the Division Bench of the Calcutta High Court delivered in FMAT No.6 of 1997 dated 10th October, 2002.

The appellant is aggrieved by the Notification under Section 4 and declaration under Section 6 of the Land Acquisition Act, 1894 dated 13th December, 1994 and 23rd June, 1995 respectively published and made by the Government of West Bengal in respect of premises no.4, Pretoria Street, Calcutta measuring more or less 0.0988 hectare (0.2441 acre).

The appellant had challenged the said notification by filing a writ petition before the Calcutta High Court. The learned Single Judge had allowed the writ petition and quashed the notification. The said notification under section 4 reads as under:

"NOTIFICATION
Calcutta No.4364-LA(PW)/3P-21/94/Home (Police)
Dated, Calcutta the 13th December, 1994
WHEREAS it appears to the Governor that land is likely to be needed for a public purpose not being a purpose of Union namely for permanent accommodation of office-cum-residence of Dy. Commissioner of Police Security Control under Commissioner of Police, Calcutta, Home (Police) Deptt. Government of West Bengal in Police Station District Calcutta Ward No.63 of Calcutta Municipal Corporation, it is hereby notified that a piece of land comprising Western portion of premises No.4, Pretoria Street, Calcutta and measuring more or less 0.0988 hectare (0.2423 acre) and bounded as specified below:-

North by : Pretoria Street

East by : Remaining portion of Premises No.4, Pretoria Street.

South by : Premises No.5, Pretoria Street

West by : Premises Nos.12 & 15, Lord Sinha Road

is likely to be needed for the aforesaid public purpose at the public expense within the aforesaid Ward of the Calcutta Municipal Corporation in the City of Calcutta.

This Notification is made, under the provisions of Section 4 of Act I of 1894 to all whom it may concern.

A plan of the land may be inspected in the Office of the First Land Acquisition Officer, Calcutta, at No.5, Bankshall Street, Calcutta \026 700 001.

In exercise of the powers conferred by the aforesaid Section, the Governor is pleased to authorise the Officers for the time being engaged in the undertaking, with their servants and workmen, to enter upon and survey the land and do all other acts required or permitted by that section.

Any person interested in the above land, who has any objection to acquisition thereof, may within thirty days after the date on which public notice of the substance of this Notification is given in the locality, file an objection in writing before the First Land Acquisition Collector, Calcutta, at No.5, Bankshall Street, Calcutta-700 001.

By Order of the Governor
T.N. Khan
Deputy Secretary to the
Govt. of West Bengal."

Thereafter, on 23.6.1995, declaration under section 6 was issued by the Government of West Bengal. The said declaration as published in Calcutta Gazette reads as under:
"DECLARATION
Calcutta No.4059-L.A./3P-21/94/Home (Police)
Dated: 23.6.95
WHEREAS the Governor is satisfied that land is needed for a public purpose being/not being a purpose of Union, namely for permanent accommodation of office-cum-residence of Dy. Commissioner of Police Security Control under Commissioner of Police Calcutta, Home (Police) Deptt. Govt. of N. Bengal, in Police Station Park Street, District Calcutta, Ward No.63 of Calcutta Municipal Corporation, it is hereby declared that a piece of land comprising premises No. Western portion of Premises No.4, Pretoria Street, Calcutta and measuring more or less 0.0988 hectare (0.2441 acre) and bounded on the

North by : Pretoria Street

East by : Remaining portion of Premises No.4, Pretoria
South by : Premises No.5, Pretoria Street
West by : Premises No.12 & 15, Lord Sinha Road

is needed for the aforesaid public purpose at the public expense partly at the public expenses and partly at the expense of within the aforesaid ward of

the Calcutta Municipal Corporation in the City of Calcutta.

This Declaration is made under the provision of Section 6 of Act 1 of 1894/read with the said Notification, to all whom it may concern.

A plan of the land may be inspected in the Office of the First Land Acquisition Collector, Calcutta, at No.5, Bankshall Street, Calcutta-700 001.

By order of the Governor,
(P.K. Guha Roy)
Deputy Secretary to the Govt. of W.B.
I.C.A. 2744(2)/95
Date: 28.6.95."

In the said declaration, it is clearly incorporated that the said piece of land is needed for office-cum-residence of Dy. Commissioner of Police (Security Control) at the public expense.

The reasons for setting aside section 4 notification and declaration under section 6 of the Land Acquisition Act, were as follows:

(I) the publication thereof, having not been preceded by handing over vacant possession of the land, by the Government to the respondents, in compliance with the order dated 18th August, 1993, passed by the learned Single Judge in Writ Petition No.3799 of 1992, had amounted to practicing fraud by the Government upon the statute;

(II) the declaration under Section 6 was set aside on the ground that the statement incorporated in the said declaration that the said premises was being acquired 'partly at the public expense and partly at the expense of within the aforesaid ward' as published in the newspaper indicated total non-application of mind by the concerned authorities".

In the year 1943, under the Defence of India Rules, the premises situated at 4, Pretoria Street, Calcutta was requisitioned by the Government of West Bengal. After requisition, the Government started using the ground floor of the two-storeyed building, standing thereon, as office of the Dy. Commissioner of Police (Security Control), and the first floor thereof, as residential accommodation of the said officer. Admittedly, the premises and the land appurtenant to the premises has been continuously in possession of the respondent-State Government since 1943 and from year 1943, the said premises is being used as the office of the Dy. Commissioner of Police (Security Control). In other words, for the last more than 63 years the office of Dy. Commissioner of Police (Security Control) has been continuously functioning from the said premises.

In this petition, we are primarily concerned with the validity of the issuance of notification under section 4 and declaration under section 6 of the Land Acquisition Act, 1894 in respect of the said premises.

In the impugned judgment and other judgments delivered from time to time, the other facts regarding requisition and acquisition have been incorporated. Therefore, briefly, we would indicate those facts in order to understand the controversy involved in the said case properly and comprehensively. We would like to clearly indicate that our directions would remain confined only to the validity of Section 4 and declaration made under Section 6 of the Act.

Essential facts

Brief facts necessary to understand and comprehend the controversy involved in the case are briefly stated as under.

After the acquisition of the said premises in the year 1943, both office and residence of the Dy. Commissioner of Police (Security Control) started functioning at the said premises. On 28th December, 1947, the Government of West Bengal de-requisitioned the said land, but detained possession thereof. Again, by order dated 30th January, 1959 issued under Section 3(1) of the West Bengal Premises Requisition and Control (Temporary Provision) Act, 1947, the Government requisitioned the said land and continued to use the same for the same purpose.

The appellant purchased the said land on 27.9.1982 along with the existing building. The appellant filed a writ petition being W.P. No.872 of 1984 before the Calcutta High Court in the year 1984.

The writ petition was allowed by the learned Single Judge vide judgment dated 17th September, 1985. The respondent-State preferred an appeal (FMA No.508 of 1985). The said appeal was disposed of by the judgment of the Division Bench dated 12th December, 1985. The requisition thereof was to remain valid for a period of six months from 12th December, 1985 and the requisition in regard to the garden was put to an end with the direction to hand over the possession to the appellant with liberty to acquire at the same time.

The appellant apprehending acquisition of the said land under the provisions of the West Bengal Land (Requisition and Acquisition) Act, 1948, on 25th April, 1986 moved the second Writ Petition (Civil Rule No. 5025(W) of 1986).

The respondent-Government once again requisitioned the said land by making an order dated 31st May, 1986 under Section 3(1) of the West Bengal Act 2 of 1948. The respondent-Government of West Bengal continued to use the said requisitioned land for the same purpose as before. Thereafter, for acquiring the said land, the government published a notice dated 14th August, 1986 under Section 4(1a) of the West Bengal Act 2 of 1948 in the official gazette on 16th August, 1986.

The appellant challenged the said order and notice under Sections 3(1) and 4(1a) of the West Bengal Act 2 of

1948 by filing a third Writ Petition (Civil Rule No. 8407(W) of 1987). The learned Single Judge disposed of the said Civil Rule 8407(W) of 1987. Both the said order under Section 3 (1) and Notice under Section 4(1a) were set aside.

The respondent-Government preferred an appeal (FMAT No. 2224 of 1987) and it was disposed of by the Division Bench on 7th September, 1990. The appeal was allowed and the judgment appealed from was set aside to the extent indicated hereinbelow. The relevant portion of the judgment is reproduced hereinbelow :-

"It however appears to us that if the vacant land to the extent of 15 feet at the back side of the covered portion of the building is acquired the purpose for which the building is intended to be acquired will be satisfied and the entirety of the vacant land and the back side of the said building is not necessary to be acquired. The order of acquisition of vacant land at the back of the building beyond 15 ft. of the vacant land at the back side of the building therefore stands annulled. It also appears to us that in the facts of this case that the State Government intended from the very beginning to acquire the premises for the said Security Control Department and for accommodating the in charge of the said department viz. The Deputy Commissioner of Police (Security Control). It was never intended by the State Government to requisition the premises temporarily for the sole purpose of requisition. It will not be correct to contend that the Government had intended initially to keep the premises in requisition but later on, it decided to acquire the said premises. Records of the Government Department also clearly demonstrate that the property was intended to be acquired for the said purpose and as the time for acquisition as specified by the Court of Appeal was running out and there was urgent necessity to maintain status quo as regards possession before acquisition proceeding is finalized under Act II of 1948, the order of requisition was made within six months only as a step in aid to pass consequential order of acquisition under Section 4(1a) of Act 1948. Looking to the relevant records of the case it does not appear to us that the order of requisition was not passed within a period of six months but such order was antedated."

Against the order of the Division Bench, special leave petition filed by the respondent-State was dismissed by this Court. Consequently, on 12th June, 1991 physical possession of the land beyond 15 ft. of the existing building was delivered back by the respondent-State to the appellant. A notice dated 14th September, 1992 under Section 5(3) of the West Bengal Act 2 of 1948 was issued by the First Land Acquisition Collector, Calcutta inviting the respondents to make their respective claims to compensation for the said land already acquired by the Government by publishing the

said notice dated 14th August, 1986 under Section 4(1a) of the West Bengal Act 2 of 1948.

It may be pertinent to mention that the appellant instead of making any claim for the grant of compensation, filed Writ Petition Nos.3798-3799 of 1992. In Writ Petition No.3798 of 1992, the notice dated 14th September, 1992 under Section 5(3) of the West Bengal Act 2 of 1948 and in FMAT No.2224 of 1987 was set aside on the ground that despite the judgment of the Division Bench in FMAT No.2224 of 1987, the said notice had been issued.

By the order passed in Writ Petition No.3799 of 1992, the requisition order dated 30th January, 1959 was set aside together with the direction to the State Government to deliver the vacant possession of the land and the building to the appellant within six months. By a subsequent order dated 8th July, 1994 passed in Writ Petition No.3798 of 1992, the learned Single Judge was pleased to modify his order dated 18th August, 1993 to the effect that the said order would not prevent the Government from issuing fresh notice in terms of the orders of the Court, for acquisition of the land within the period of six months after they wanted to acquire the land.

In this background, the respondent-State Government published the notification dated 13th December, 1994 in the official gazette on 21st December, 1994 under Section 4 of the Land Acquisition Act of 1894. In the notification, the same public purpose was indicated that the premises were required for the office of Deputy Commissioner of Police (Security Control) which had been in possession of respondent State of West Bengal since 1943. The land (the purpose for which it was being used from the year 1943) and the land (the covered area 15 ft. as upheld by the Division Bench in FMAT No.2224 of 1987) at the same premises was needed by the State Government at the public expense.

The appellant had filed his objections under Section 5A of the Act. The objections of the appellant were heard by the competent authority and thereafter, declaration under Section 6 of the Act was issued by the competent authority on 23rd June, 1995. It was published in the newspaper on 6 and 7th July, 1995 and in the official gazette on 7th August, 1995. According to the appellant, the notification under Section 4 of the Land Acquisition Act could not have been validly issued in respect of the land, possession whereof had been retained illegally by the State Government. It was further incorporated that the Government had earlier been continuing possession of the land only in terms of the requisition order dated 31st May, 1986. The said order of requisition having been quashed by the Court’s order dated 18th August, 1993, the Government’s possession of land sought to be acquired became illegal and unauthorized. It was asserted by the appellant that having abandoned the earlier proceedings initiated under the West Bengal Act 2 of 1948, as was evident from the fact of publication of the impugned Notification under Section 4 read with Section 4 of the Act No.1 of 1894, the State Government had lost the right to retain the possession of the land. The possession would have been taken only in terms of the

provisions of Section 16 of the Act 1 of 1894. It was further asserted by the appellant that the very fact of Government publishing the Notification under Section 4, while illegally retaining possession of the land was sufficient to hold that the power was exercised mala fide. The learned Single Judge came to the conclusion that possession of the land could be taken by the Government only after passing of an award under the provisions of the Act 1 of 1894.

In the instant case, no award has been passed, the possession of the land had always remained with the Government. The possession of the land had not been handed over to the respondent in spite of Court's order dated 18th August, 1993 passed by the learned Single Judge. According to the appellant, non-delivery of possession of the land had vitiated the Notification under Section 4 of the Land Acquisition Act so as to make it a nullity. The Government was granted liberty to acquire the land in accordance with law but that liberty was subject to handing over the derequisitioned land to the respondent.

The appellant submitted that the publication of the Notification under Section 4 of the Act 1 of 1894 without first delivering back possession of the land to the respondent in terms of the court's order passed in Writ Petition No.3799 of 1992 amounted to practicing fraud by the government upon the statute.

It was contended by the respondent before the Division Bench that since the Government had been granted liberty to take steps for acquisition of the land and the Notification under Section 4 of the Act 1 of 1894 was issued pursuant to grant of such liberty, there was no scope and reason for the State Government to give back possession of the land to the appellant; as a condition precedent for initiation of proceedings. As regards the declaration, it has been contended that the learned Single Judge should not have decided the question of validity by relying on a printing mistake appearing in the declaration which had been published in the newspaper because the purported vagueness indicated by the learned Single Judge did not exist and a real one as was apparent from the Notification itself and the declaration published in the official gazette.

Both the notification under section 4 and declaration under section 6 have been reproduced in the earlier part of the judgment. The respondent placed reliance on Sri Nripati Ghoshal v. Premavati Kapur & Ors. [(1996) 5 SCC 386 (para 4)] and First Land Acquisition Collector & Ors. v. Nirodhi Prakash Gangoli & Anr. [(2002) 4 SCC 160 (para 6)] and contended that the State Government had power to initiate an acquisition proceeding by publishing a Notification under Section 4 of the Act and in respect of any land which is in the Government's possession and, therefore, Notification published in the instant case cannot be faulted with, on the ground as contended by the appellant.

The learned counsel for the appellant also contended that delivery of possession of the land in the facts and circumstances of the present case was a sine

qua non for publishing the Notification under Section 4 of the Land Acquisition Act.

On the question of requirement of delivery of possession reliance has been made on Raghunath & Ors. v. State of Maharashtra & Ors. [AIR 1988 SC 1615 (para 9)] Hindustan Oil Mills Ltd. & Anr. v. Special Deputy Collector (Land Acquisition) [AIR 1990 SC 731 (paras 8 & 9)] and State of West Bengal v. Bireshwas Dutta Estate (P) Ltd. [(2000) 1 Calcutta Law Times 165(HC) (para 37)].

Reliance has also been placed on Sailendra Narayana Bhanja Deo v. State of Orissa [AIR 1956 SC 346 (para 8).
Analysis of the impugned judgment

The Division Bench carefully examined the pleadings, documents and the judgments cited at the Bar. The Court came to a categorical finding that for the purpose of examining the validity of a Notification under Section 4 of the Land Acquisition Act, the question of possession of land is absolutely irrelevant; the examination should remain confined only to the question of existence of public purpose. The Division Bench drew support for the aforesaid view from the case of Nirodhi Prakash Gangoli. The Division Bench also observed that neither the appellant had seriously contended that behind the proposed acquisition, the public purpose was absolutely absent; nor did the learned Single Judge arrived at the conclusion that the proposed acquisition was not for a notified public purpose.

The Government of West Bengal was empowered to take steps for acquisition of any land in any locality, if the same was needed for public purpose under section 4 of the Land Acquisition Act. According to the Division Bench, in absence of any bar, the Government was fully empowered to publish a notification under Section 4 in respect of a piece of land which is already in the government's possession. The Division Bench observed that the order dated 18th August, 1993 passed by the learned Single Judge was in ignorance of both the aforementioned statutory provisions and the binding Division Bench judgment.

In Nirodhi Prakash Gangoli's case (supra), exactly similar controversy came before the Court for adjudication regarding physical possession. The Court held as under:
"6. It is indeed difficult for us to uphold the conclusion of the Division Bench that acquisition is mala fide on the mere fact that physical possession had not been delivered pursuant to the earlier directions of a learned Single Judge of Calcutta High Court dated 25.8.1994. When the Court is called upon to examine the question as to whether the acquisition is mala fide or not, what is necessary to be inquired into and found out is, whether the purpose for which the acquisition is going to be made, is a real purpose or a camouflage. By no stretch of imagination, exercise of power for acquisition can be held to be mala fide, so long as the purpose of

acquisition continues and as has already been stated, there existed emergency to acquire the premises in question. The premises which were under occupation of the students of the National Medical College, Calcutta, were obviously badly needed for the College and the appropriate authority having failed in their attempt earlier twice, the orders having been quashed by the High Court, had taken the third attempt of issuing notification under Sections 4(1) and 17(4) of the Act, such acquisition cannot be held to be mala fide and, therefore, the conclusion of the Division Bench in the impugned judgment that the acquisition is mala fide, must be set aside and we accordingly set aside the same."

The High Court was correct and justified in holding that while examining the validity of notification under Section 4 of the Land Acquisition Act, the question of possession of land was absolutely irrelevant.

The Division Bench held that the order dated 18th August, 1993 was per incurium. The Court also observed that the learned Single Judge was wrong in holding that the publication of the said Notification under Section 4 was an act done in violation of the said order dated 18th August, 1993. According to the Division Bench, the learned Single Judge proceeded on a completely wrong premise that the land in question had been kept in possession by the Government, even after formally derequisitioning the same; for, as a matter of fact, the piece sought to be acquired, had never been derequisitioned after 30th January, 1959; it had rather stood absolutely vested in the Government. The Division Bench clearly came to the conclusion that the State Government's possession of the land never became illegal or unauthorized by the operation of law.

The Division Bench specifically observed that the declaration published on 7th August, 1995 in the official gazette has been produced before them. The Division Bench observed that they were satisfied that the words 'partly at the public expense and partly at the expense of' within the aforesaid ward published in the newspaper did not correctly reproduce the declaration issued under section 6 of the Act. The official gazette had correctly incorporated that the land was acquired at the public expense only. Therefore, the Division Bench did not find any infirmity in Section 4 notification and in the declaration dated 23rd June, 1995 made under Section 6 of the Land Acquisition Act, 1894.

The Division Bench was also justified in coming to the conclusion that the appellant cannot be permitted to take advantage of some typographical error in the newspaper particularly when in the official gazette as well as Notification under Section 4 and in the declaration of 23rd June, 1995 made under Section 6 of the Act of 1894, no such mistake appeared. Therefore, the submission of the appellant was totally devoid of any merit.

It may be pertinent to mention that the Division Bench was quite careful about the rights of the appellant and various proceedings and orders passed in those

proceedings. While taking into consideration all the relevant facts and circumstances, the Division Bench clearly observed as under and we deem it appropriate to quote the relevant observation of the Division Bench:-

"We have already seen that there was an unbroken and continuous valid requisition, which had ultimately merged in the acquisition notice dated 14th August, 1986. Therefore, to whatever rent compensation or damages the respondents were entitled in law; they were always and still are, at liberty to claim and realize the same from the Government, in accordance with law. Regarding the propriety and necessity of the publication of the notification dated 13th December, 1994, under section 4 of the Act 1 of 1894, in the face of the Division Bench decision dated 7th September, 1990 in F.M.A.T. No. 2224 of 1987, we do not propose to express any opinion, lest we should allow the appellants to challenge their own action, to the inevitable detriment of valuable accrued right, if any, of the respondents. We only say that in view of our decision to allow the appeal, and uphold the section 4 notification and consequent section 6 declaration, we do not think it proper or necessary to pass any further order on the respondents' said applications (C.A. Nos. 4592 and 5886 of 2001); and they shall be deemed to be disposed of, with liberty to the respondents to claim their dues, if any, before the appropriate forum, in accordance with law."

The Division Bench allowed the appeal and set aside the impugned judgment of the learned Single Judge dated 2nd December, 1996. The Division Bench has observed that the appellant would be entitled to recover rent, compensation of rent to which he was entitled in law in appropriate proceedings. The appellant has failed to point out any infirmity as far as Notification under Section 4 and consequent declaration under Section 6 of the Act. Section 4 of the Notification is usually assailed on the ground of public purpose. Therefore, we deem it appropriate to enumerate the concept of Public Purpose and deal with the decided cases interpreting the scope and ambit of public purpose.

Public Purpose

Public Purpose has been defined in the Land Acquisition Act as under:-

"(f) the expression "public purpose" includes \026

(i) the provision of village-sites, or the extension, planned development or improvement of existing village sites;

(ii) the provision of land for town or rural planning;

(iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and

subsequent disposal thereof in whole or in part in lease, assignment or outright sale worth the object of securing further development as planned;

(iv) the provision of land for a corporation owned or controlled by the State;

(v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced to affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State;

(vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government, or by any authority established by Government for carrying out any such scheme, or, with the prior approval of the appropriate Government, by a local authority or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State, or a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State;

(vii) the provision of land for any other scheme of development sponsored by Government or, with the prior approval of the appropriate Government, by a local authority;

(viii) the provision of any premises or building for locating a public office;

but does not include acquisition of land for Companies."

Public purpose will include a purpose in which the general interest of community as opposed to the interest of an individual is directly or indirectly involved. Individual interest must give way to public interest as far as public purpose in respect of acquisition of land is concerned.

In the Constitution of India, some guidelines can be traced as far as public purpose is concerned in Article 37 of the Constitution. The provisions contained in this Part (Directive Principles of the State Policy) shall not be enforceable by any Court, but the principles therein laid down are nevertheless fundamental in the governance of

the country. It shall be the duty of the State to apply these principles in making laws.

According to Article 39 of the Constitution, the State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. The laws made for the purpose of securing the constitutional intention and spirits have to be for public purpose.

The term 'public purpose' has been defined in Black Law Dictionary (Fifth Edition) as under:
"A public purpose or public business has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity and contentment of all the inhabitants or residents within a given political division, as, for example, a state, the sovereign powers of which are exercised to promote such public purpose or public business."

Public purpose is bound to vary with times and prevailing conditions in the community or locality and, therefore, the legislature has left it to the State (Government) to decide what is public purpose and also to declare the need of a given land for the purpose. The legislature has left the discretion to the Government regarding public purpose. The Government has the sole and absolute discretion in the matter.

In State of Bihar v. Kameshwar Singh reported in AIR 1952 SC 252 at page 259, a Constitution Bench of this Court considered the expression 'public purpose'. Mahajan, J. explained the expression 'public purpose' in the following manner:
"The expression "public purpose" is not capable of a precise definition and has not a rigid meaning. It can only be defined by a process of judicial inclusion and exclusion. In other words, the definition of the expression is elastic and takes its colour from the statute in which it occurs, the concept varying with the time and state of society and its needs. The point to be determined in each case is whether the acquisition is in the general interest of the community as distinguished from the private interest of an individual."

In that case, S. R. Das, J. observed as under:
"We must regard as public purpose all that will be calculated to promote the welfare of the people as envisaged in the Directive Principles of State policy whatever else that expression may mean."

Almost a century ago, in Hamabai v. Secretary of State reported in (1911) 13 Bom LR 1097, Batchelor, J. observed: "General definitions are, I think, rather to be avoided where the avoidance is possible, and I make no attempt to define precisely the extent of the phrase 'public purpose' in the lease; it is enough to say that, in my opinion, the phrase, whatever else it may mean, must include a purpose, that is, an object or aim, in which the

general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned" received the approval of the Privy Council".

The definition of public purpose has been relied in number of subsequent decisions including the Constitution Bench judgment of this Court.

The concept of public purpose was dealt in great detail in a leading American case Munn v. Illinois reported in (1877) 94 US 113: 24 L. Ed 77 and in some other cases. The doctrine declared is that property becomes clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large and from such clothing the right of the legislature is deduced to control the use of the property and to determine the compensation which the owner may receive for it. Field, J. observed as follows: "The declaration of the Constitution of 1870, that private buildings used for private purposes shall be deemed public institutions, does not make them so. The receipt and storage of grain in a building erected by private means for that purpose does not constitute the building a public warehouse. There is no magic in the language, though used in a constitutional convention, which can change a private business into a public one, or alter the character of the building in which the business is transacted."

In United Community Services v. Omaha Nat. Bank 77 N.W.2d 576, 585, 162 Neb. 786, the Court observed that a public purpose has for its objective the promotion of the public health, safety, morals, security, prosperity, contentment, and the general welfare of all the inhabitants.

In People ex rel. Adamowski v. Chicago R.R. Terminal Authority, 151 N.E.2d 311, 314, 14 III.2d 230 the Court observed that public purpose is not static concept, but is flexible, and is capable of expansion to meet conditions of complex society that were not within contemplation of framers of Constitution.

In Green v. Frazier, 176 N.W. 11, 17, 44 N.D. 395, the Court observed that a public purpose or public business has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within a given political division, as, for example, a state, the sovereign powers of which are exercised to promote such public purpose or public business.
In the words of Lord Atkinson in Central Control Board v. Cannon Brewery Co. Ltd. (1919) A.C. 744, the power to take compulsorily raises by implication a right to payment.

The power of compulsory acquisition is described by the term "eminent domain". This term seems to have been originated in 1525 by Hugo Grotius, who wrote of this power in his work "De Jure Belli et Pacis" as follows : "The property of subjects is under the eminent domain of the State, so that the State or he

who acts for it may use and even alienate and destroy such property, not only in the case of extreme necessity, in which even private persons have a right over the property of others, but for ends of public utility, to which ends those who founded civil society must be supposed to have intended that private ends should give way. But it is to be added that when this is done the State is bound to make good the loss to those who lose their property."

The Court observed that the requirement of public purpose is implicit in compulsory acquisition of property by the State or, what is called, the exercise of its power of 'Eminent Domain'.
The Court further observed that the principle of compulsory acquisition of property, says Cooley (in Vol. II at p. 113, Constitutional Limitations) is founded on the superior claims of the whole community over an individual citizen but is applicable only in those cases where private property is wanted that public use, or demanded by the public welfare and that no instance is known in which it has been taken for the mere purpose of raising a revenue by sale or otherwise and the exercise of such a power is utterly destructive of individual right.

In The State of Bombay v. R.S. Nanji (1956) SCR 18, the Court observed that it is impossible to precisely define the expression 'public purpose'. In each case all the facts and circumstances will require to be closely examined in order to determine whether a public purpose has been established. Prima facie, the Government is the best judge as to whether public purpose is served by issuing a requisition order, but it is not the sole judge. The courts have the jurisdiction and it is their duty to determine the matter whenever a question is raised whether a requisition order is or is not for a public purpose.
In the said case, the Court observed that the phrase 'public purpose' includes a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals is directly and vitally concerned. It is impossible to define precisely the expression 'public purpose'. In each case all the facts and circumstances will require to be closely examined to determine whether a public purpose has been established.
In that case, the Court also referred to the following cases: The State of Bombay v. Bhanji Munji & Another (1955) 1 SCR 777 and The State of Bombay v. Ali Gulshan (1955) 2 SCR 867.

In Somawanti v. State of Punjab (1963) 2 SCR 774, the Court observed that public purpose must include an object in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned. Public purpose is bound to change with the times and the prevailing conditions in a given area and, therefore, it would not be a practical proposition even to attempt an extensive definition of it. It is because of this that the legislature has left it to the Government to say what is a public purpose and also to declare the need of a given land for a public purpose.

The Constitution Bench of this Court in Somawanti (supra) observed that whether in a particular case the purpose for which land was needed was a public purpose or not was for the Government to be satisfied about and the declaration of the Government would be final subject to one exception, namely that where there was a colourable exercise of the power the declarations would be open to challenge at the instance of the aggrieved party.

In Babu Barkya Thakur v. The State of Bombay & Others (1961) 1 SCR 128, the Court observed as under:

"It will thus be noticed that the expression 'public purpose' has been used in its generic sense of including any purpose in which even a fraction of the community may be interested or by which it may be benefited."

The Constitution Bench in Satya Narain Singh v. District Engineer, P.W.D., Ballia and Anr. reported in AIR 1962 SC 1161 while describing public service observed :-

"It is undoubtedly not easy to define what is "public service" and each activity has to be considered by itself for deciding whether it is carried on as a public service or not. Certain activities will undoubtedly be regarded as public services, as for instance, those undertaken in the exercise of the sovereign power of the State or of governmental functions. About these there can be no doubt. Similarly a pure business undertaking though run by the Government cannot be classified as public service. But where a particular activity concerns a public utility a question may arise whether it falls in the first or the second category. The mere fact that that activity may be useful to the public would not necessarily render it public service. An activity however beneficial to the people and however useful cannot, in our opinion, be reasonably regarded as public service if it is of a type which may be carried on by private individuals and is carried on by government with a distinct profit motive. It may be that plying stage carriage buses even though for hire is an activity undertaken by the Government for ensuring the people a cheap, regular and reliable mode of transport and is in that sense beneficial to the public".

In Arnold Rodricks v. State of Maharashtra, reported in (1966) 3 SCR 885, while Justice Wanchoo and Justice Shah dissenting from judgment observed that there can be no doubt that the phrase 'public purpose' has not a static connotation, which is fixed for all times. There can also be no doubt that it is not possible to lay down a definition of what public purpose is, particularly as the concept of public purpose may change from time to time. There is no doubt however that public purpose involves in it an element of general interest of the community and whatever furthers the general interest must be regarded as a public purpose.

In Bhim Singhji v. Union of India (1981) 1 SCC 166, as per Sen, J., the concept of public purpose necessarily implies that it should be a law for the

acquisition or requisition of property in the interest of the general public, and the purpose of such a law directly and vitally subserve public interest.

Broadly speaking the expression 'public purpose' would however include a purpose in which the general interest of the community as opposed to the particular interest of the individuals is directly and virtually concerned.

In Laxman Rao Bapurao Jadhav v. State of Maharashtra reported in (1997) 3 SCC 493, this Court observed that "it is for the State Government to decide whether the land is needed or is likely to be needed for a public purpose and whether it is suitable or adaptable for the purpose for which the acquisition was sought to be made. The mere fact that the authorized officer was empowered to inspect and find out whether the land would be adaptable for the public purpose, it is needed or is likely to be needed, does not take away the power of the Government to take a decision ultimately".

In Scindia Employees' Union v. State of Maharashtra & Others reported in (1996) 10 SCC 150, this Court observed as under:

"The very object of compulsory acquisition is in exercise of the power of eminent domain by the State against the wishes or willingness of the owner or person interested in the land. Therefore, so long as the public purpose subsists the exercise of the power of eminent domain cannot be questioned. Publication of declaration under Section 6 is conclusive evidence of public purpose. In view of the finding that it is a question of expansion of dockyard for defence purpose, it is a public purpose."

The right of eminent domain is the right of the State to reassert either temporarily or permanently its dominion over any piece of land on account of public exigency and for public good.

In the case of Coffee Board v. Commissioner of Commercial Taxes reported in (1988) 3 SCC 263, the Court observed that the eminent domain is an essential attribute of sovereignty of every State and authorities are universal in support of the definition of eminent domain as the power of the sovereign to take property for public use without the owner's consent upon making just compensation.

The power of eminent domain is not exercisable in Anglo-Saxon jurisprudence except on condition of payment of compensation. In V.G. Ramachandran's Law of Land Acquisition and Compensation (Eighth Edition) by G.C. Mathur, it is stated (at page 1)- "In United States, the power of eminent domain is founded both on the Federal (Fifth Amendment) and on the State Constitutions. The scope of the doctrine in America stands considerably circumscribed by the State Constitutions. Now, the Constitution limits the power to taking for a public purpose and prohibits the exercise of power of eminent

domain without just compensation. The process of exercising the power of eminent domain now is commonly referred to as 'condemnation' or 'expropriation'."

A seven-Judge Bench of this Court in The State of Karnataka & Another v. Shri Ranganatha Reddy & Another reported in (1977) 4 SCC 471, explained the expression 'public purpose' in the following words:

"6. It is indisputable and beyond the pale of any controversy now as held by this Court in several decisions including the decision in the case of His Holiness Kesavananda Bharati Sripadagalaveru v. State of Kerala [1973] Supp. 1 S.C.R. 1 - popularly known as Fundamental Rights case - that any law providing for acquisition of property must be for a public purpose. Whether the law of acquisition is for public purpose or not is a justifiable issue. But the decision in that regard is not to be given by any detailed inquiry or investigation of facts. The intention of the legislature has to be gathered mainly from the Statement of Objects and Reasons of the Act and its Preamble. The matter has to be examined with reference to the various provisions of the Act, its context and set up, the purpose of acquisition has to be culled out therefrom and then it has to be judged whether the acquisition is for a public purpose within the meaning of Article 31(2) and the law providing for such acquisition.

61. When we ascertain the content of 'public purpose', we have to bear the above factors in mind which mean that acquisition of road transport undertakings by the State will undoubtedly be a public purpose. Indeed, even in England, 'public purposes' have been defined to mean such 'purposes' of the administration of the government of the country (p. 228, Words & Phrases Legally defined, II Edn.). Theoretically, or even otherwise, there is no warrant for linking up public purpose with State necessity, or in the court throwing off the State's declaration of public purposes to make an economic research on its own. It is indeed significant that in Section 40 (b) of the Land Acquisition Act, 1894, the concept of 'public use' took in acquisition for the construction of some work even for the benefit of a company, provided such work as likely to prove useful to the public. Even the American Constitution, in the 5th Amendment, uses the expression 'public use' and it has been held in India in Kameshwar that 'public purpose' is wider than 'public use'."

Ambiguity, indefiniteness and vagueness of public purpose are usually the grounds on which notifications under Section 4(1) of the Land Acquisition Act are assailed.

Public purpose cannot and should not be precisely defined and its scope and ambit be limited as far as

acquisition of land for the public purpose is concerned. Public purpose is not static. It also changes with the passage of time, need and requirements of the community. Broadly speaking, public purpose means the general interest of the community as opposed to the interest of an individual.

The power of compulsory acquisition as described by the term 'eminent domain' can be exercised only in the interest and for the welfare of the people. The concept of public purpose should include the matters, such as, safety, security, health, welfare and prosperity of the community or public at large.

The concept of 'eminent domain' is an essential attribute of every State. This concept is based on the fundamental principle that the interest and claim of the whole community is always superior to the interest of an individual.

Public purpose for which the premises was required in the instant case was not questioned seriously. As a matter of fact, the State of West Bengal has been using the premises in question for more than six decades for the safety and security of the people by having an office of the Deputy Commissioner of Police (Security Control). Therefore, by no stretch of imagination, it can be said that the premises was not required by the State Government for the interest and welfare of the people or there was no public purpose involved in acquiring the premises in question.

We have heard the learned counsel for the appellant and the respondent at length. We have also carefully examined the pleadings, documents, impugned judgments and other judgments cited at the Bar. We see no reason to interfere with the well-reasoned judgment passed by the Division Bench of the Calcutta High Court, particularly, when the Division Bench had given liberty to the appellant to recover rent, compensation or damages in appropriate proceedings in accordance with law. The appeal being devoid of any merit is accordingly dismissed.

In the facts and circumstances of the case, we direct the parties to bear their own costs.