

Form No. J (2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

FMA 168 of 2023

With

MAT 173 of 2023

With

MAT 174 of 2023

With

MAT 175 of 2023

With

MAT 176 of 2023

With

MAT 177 of 2023

With

MAT 178 of 2023

Burdwan Development Authority & Anr.

Vs.

The State of West Bengal & Ors.

with

MAT 1272 of 2023

The State of West Bengal & Ors.

Vs.

Sudhir Kumar Mazumdar & Ors.

with

MAT.1333 of 2023

The State of West Bengal & ors.

Vs.

Sk Abdul Gaffar & Ors.

with

MAT 1334 of 2023

The State of West Bengal & Ors.

-2-

Vs.
Marhabuddin Mondal & Ors.
With
MAT1353 of 2023
The State of West Bengal & Ors.
Vs.
Bishwanath Mondal & Ors.
With
MAT1354 of 2023
The State of West Bengal & Ors.
Vs.
Bijay Sain & Ors.
With
MAT1355 of 2023
The State of West Bengal & Ors.
Vs.
Alamgir Mallick & Ors.
With
MAT1274 of 2023
The State of West Bengal & Ors.
Vs.
Rekha Rani Roy & Ors.

For the Burdwan Development : Mr. Supratim Dhar,
Authority (BDA) Mr. Tanmoy Mukherjee,
Mr. Falguni Majhi, Advocates

For the State : Md. T. M. Siddiqui, Ld. AGP
Mr. Chandi Charan De, Ld. AGP
Mr. Soumitra Bandopadhyay,
Mr. S. Adak,
Mr. Anirban Sarkar
Mr. Sadhan Kr. Halder, Advocates

For the National Highway : Ms. Manika Roy, Advocate
Authority of India

For the Writ Petitioners : Mr. Uttiya Ray,
Mr. Arnab Mandak, Advocates

Heard on : August 30, 2023 September 8, 2023 & September 14, 2023

Judgement on : September 14, 2023

DEBANGSU BASAK, J.

1. Fourteen appeals directed against the same judgment and order dated September 30, 2022 passed by the first Court in seven writ petitions are heard analogously.

2. These fourteen appeals can be arraigned in two sets. One set of appeals is at the behest of the State of West Bengal, while the other set of appeals is at the behest of the Burdwan Development Authority (BDA).

3. Learned Additional Government Pleader appearing for the State submits that, the land in question was acquired by a proceeding initiated under the Land Acquisition Act, 1894 (in short 'the Act of 1894') for a public purpose at the instance of the requiring body namely BDA. He submits that, a notice under Section 4 of the Act of 1894 was issued on July 6, 2004. Declaration under Section 6 of the Act of 1894 was issued on February 15, 2005 and the publication thereof was made on March 14, 2005. He contends that, possession of the entirety of the land, including the plots involved in the seven writ petitions filed by the writ petitioners, were taken on April 2, 2007. In support of such contention he relies upon a writing dated April 2, 2007 which shows that, the State authorities took possession of the land in question and made over possession thereof to the BDA Authorities. He submits that, award in respect of the acquisition was published on March 9, 2007 with apportionment thereof being also made. He draws the attention of the Court to the fact that some of the writ petitioners applied before the authorities for disbursement of the compensation under the award. Therefore, he contends that, since the

possession of the land being taken and award thereof being published, the land stood vested with the State. According to him, the question of divesting the land involved in the writ petitions does not arise.

4. Learned Additional Government Pleader appearing for the State draws the attention of the Court to the prayers made by the writ petitioners in the seven several writ petitions. He submits that, the first prayer was with regard to a representation dated March 31, 2021 made by the writ petitioners for the purpose of compensation under the *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013*. The second prayer was with regard to release of portion of Plots owned by them from the acquisition proceedings. He submits that, the writ petitioners are entitled to none of the two reliefs as prayed for before the First Court.

5. Relying upon **(1997) 6 SCC 207 [W.B. Houseing Board & Ors. Vs. Brijendra Prasad Gupta & Ors.]**, and **(2003) 5 SCC 365 [Ahuja Industries Ltd. Vs. State of Karnataka & Ors.]**, learned Additional Government Pleader submits that, no roving inquiry is required to be made with regard to the title to the land by the Acquiring Authority. In the facts of the present case, the State proceeded on the basis of the Record of Rights. The writ petitioners are purchasers who purchased from the persons named in the Record of Rights. The Record of Rights available at that material point of time did not show that the writ petitioners were the owners of the land in question.

6. Relying upon **(2010) 13 SCC 98 [May George vs. Special Tahsildar & Ors.]**, learned Additional Government Pleader submits that, provisions of Section 9(3) of the Act of 1894 was held to be not mandatory.

7. Learned Additional Government Pleader submits, relying upon **AIR 1996 SC 237[Dr. G.H. Grant vs. The State of Bihar]** submits that, the

writ petitioners are not remediless so far as compensation is concerned. The writ petitioners can approach the authorities either under Section 18 or under Section 30 of the Act of 1894.

8. With regard to delay in approaching the High Court, learned Additional Government Pleader appearing for the State relies upon **(1997) 1 SCC 134 [Ramniklal N. Bhutta & Anr. Vs. State of Maharashtra & Ors.]**. He points out that, the acquisition proceedings are of 2004 with the writ petitions in respect thereof being filed in 2021.

9. Relying upon **(2020) 8 SCC 129 [Indore Development Authority vs. Manoharlal & Ors.]**, learned Additional Government Pleader submits that, since, the State took possession of the land in question and passed an award in respect thereof, the question of lapse of the acquisition proceedings initiated under the Act of 1894 does not arise. The writ petitioners are not entitled to be considered under the Act of 2013 nor are they entitled to return of their land.

10. Learned Additional Government Pleader relies upon file relating to the acquisition proceedings. He draws the attention of the Court to an entry dated April 2, 2007 in the order sheet of the land acquisition file and submits that, the surveyor was directed to hand over possession to the authorized persons of the requiring body on April 2, 2007. The surveyor made a note on the file on April 2, 2007 that, as ordered, possession of 4.50 acres of land was taken over and made over to the representative of the requiring body concerned. He refers to the certificate of possession in Form No. 21 and submits that, possession was taken by the State and made over to the requiring body on April 2, 2007.

11. Learned Additional Government Pleader appearing for the State refers to a writing dated March 13, 2007 and submits that, there was a sanction

granted by the Government for publication of the award and that award was duly made.

12. Consequently, learned Additional Government Pleader submits that, the impugned judgment and order be set aside and the writ petitions be dismissed.

13. Learned advocate appearing for the BDA adopts the submissions advanced on behalf of the State. In addition, he submits that, the award that was published was with due approval. In support of such contention, he relies upon documents appearing at pages 186 and 188 of the paper book. He points out that, possession of the land in question was made over to NHAI.

14. Learned advocate appearing for the NHAI submits that, NHAI received possession of the land in question from BDA under cover of a letter dated April 9, 2021.

15. Learned advocate appearing for the private respondents/writ petitioners submits that, the State never took possession of the land in question. His clients are still in actual physical possession thereof. He submits that, no Panchnama as was envisaged in **Indore Development Authority** (supra) was prepared. The so-called making over of possession by the State to the requiring body is not a document to establish that, State took possession of the property concerned from the writ petitioners. In any event, the document of possession to the requiring body is not witnessed by any independent witnesses. In fact, no document of taking of possession by the State witnessed by two independent persons were ever produced by the State. Consequently, possession of the property in question was never taken by the State.

16. Learned advocate for the writ petitioners, in support of his contention that, possession was never taken by the State and that, non-taking of

possession is fatal to the acquisition proceedings, relies upon **(2012) 1 SCC 792 [Raghubir Singh Sehrawat vs. State of Haryana & Ors.]** and **(2011) 5 SCC 386 [Prahlaad Singh & Ors. vs. Union of India & Ors.]**

17. Learned advocate appearing for the writ petitioners submits that, no valid award was passed in respect of the acquisition proceeding. He refers to the file of the acquisition proceeding which was produced in Court today. He submits that, such file does not contain any endorsement that, the compensation amount was deposited in a revenue account. File merely shows that the amount comprised in the award was deposited in the personal ledger account which is not in consonance of the directive of the law.

18. Learned advocate for the respondents draws the attention of the Court to the provisions of the West Bengal Land Acquisition Manual, 1991. He refers to Chapter XI relating to taking of delivery of possession and in particular to Rule 139 and 143 thereof. He submits that, possession of the property in question was not taken in accordance with the mode of taking possession specified under the Land Acquisition Manual, 1991. He refers to Rule 146 of the Land Acquisition Manual, 1991 and submits that the certificate of possession which is appearing at pages 134 of the Paper Book cannot be construed to be one contemplated under the Land Acquisition Manual, 1991.

19. Referring to **(2011) 2 SCC 447 [Land Acquisition Officer-cum-RDO, Chevella Division, Ranga Reddy District vs. A. Ramachandra Reddy & Ors.]**, learned advocate appearing for the writ petitioners submits that, NHAI issued a notification for acquisition. It is only after NHAI issued such notification that his clients became aware of the activities of acquisition by NHAI. He submits that, the initial acquisition proceedings can be said to

become non-est in view of the subsequent notification of NHAI for acquisition, even if the initial acquisition proceeding was taken.

20. Learned advocate appearing for the writ petitioners submits that, the State was aware of the ownership of his clients at every point of time. State did not involve his clients in the acquisition proceedings under the Act of 1894 deliberately. He refers to the Record of Rights and submits that, the names of his clients appeared therefrom and only during the course of hearing of the writ petitions surreptitiously, the Record of Rights was sought to be changed.

21. Learned advocate appearing for the writ petitioners refers to the queries raised under the Right to Information Act, 2005 and the replies thereto. According to him, the documents disclosed shows that, the so-called acquisition proceedings under the Act of 1894 lapsed in view of the fact that, there was a fresh acquisition proceeding under the provisions of National Highway Act, 1956. He submits that the impugned judgment and order should be upheld.

22. State initiated an acquisition proceeding under the Act of 1894 for the purpose of setting up a commercial complex at Burdwan.

23. A notification under Section 4 of the Act of 1894 was issued on July 6, 2004. A declaration under Section 6 of the Act of 1894 was issued on February 15, 2005 with the publication thereof being made on March 14, 2005.

24. The writ petitioners claim title in respect of a portion of the land covered under the acquisition proceeding by virtue of title deeds executed in or about 1988. The writ petitioners claim that they were mutated in the record of rights in respect of the plots concerned. They rely upon a certificate of mutation dated April 26, 1995 in this regard.

25. There is a certificate of mutation issued in favour of the writ petitioners dated April 26, 1995 acknowledging the right, title and interest of the writ petitioners in respect of the plots concerned at least to the extent of their liability to pay the tax in respect thereof.

26. Apart from the acquisition proceeding initiated under the Act of 1894, an attempt to acquire the same property was made under the National Highways Act, 1956 by the NHAI by a notification under Section 3C of the Act of 1956 dated June 26, 2020. NHAI did not issue any notification under Section 3D of the Act of 1956.

27. As noted above, an acquisition proceeding was initiated under the Act of 1894 for development of commercial complex. Entirety of the land acquired was not utilised for such project. A portion of the acquired land was made over to the NHAI subsequently.

28. Indore Development Authority (supra) deals with the inter play between the provisions of the Act of 2013 and the Act of 1894. It deals with a deemed lapse under the Act of 1894. It is of the view that, deemed lapse of proceeding initiated under the Act of 1894 occurs where award under Section 11 of the Act of 1894 was made five years or more prior to the date of commencement of the Act of 2013 and two conditions specified under Section 24(2) are cumulatively satisfied, that is, the possession of the acquired land was not taken and compensation not paid. It observes that, even if one of the two conditions is not satisfied, then the acquisition proceeding under the Act of 1894 shall not lapse.

29. As noted above, the two prayers of the writ petitioners before the First Court relate to disposal of a representation under the Act of 2013 and the claim that the acquisition proceeding initiated under the provisions of the Act of 1894 lapsed therefore, the plots should be

directed to come out of the purview of acquisition proceeding under the Act of 1894.

30. In view of the pronouncement of the **Indore Development Authority (supra)** we need to adjudge whether, (i) possession of the plots in question was taken and (ii) whether, award in respect of the plots in question was published and compensation awarded was paid or not.

31. Section 16 of the Act of 1894 contemplates taking over of possession of the lands sought to be acquired. The West Bengal Land Acquisition Manual 1991 at Chapter XI deals with taking and delivery of possession. Rule 139 deals with taking possession by the Collector. It notes that, the Collector can authorise any subordinate officer to take possession under Section 16 of the Act of 1894. Rule 143 thereof provides the mode for taking possession. It notes that Act of 1894 is silent on the mode of taking possession. It also notes that actual possession by the Collector or his agent or taking symbolic possession or doing something equivalent to effective possession were contemplated. It also notes that, neither a possession on paper or symbolic possession as duly understood in civil law comes within the meaning of taking possession under Section 16 or 17 of the Act of 1894.

32. In the facts of the present case, the records relating to the acquisition proceeding were produced in Court. We perused the same. We perused the order-sheet relating to the acquisition proceeding. Inspection of the records so produced was given to the learned advocate appearing for the writ petitioners in Court. He referred to the records and made submissions thereon in course of hearing.

33. We find from the ordersheet of the acquisition proceeding under the Act of 1894 that, there is an endorsement dated April 2, 2007 directing the surveyor to hand over the possession of the plots to the requiring body on April 2, 2007. There is a note of action taken on order. In such order-sheet which records that, "as ordered possession of 4.50 acres of land of Mouza Alisa JL No.77 taking over and making over to the representative of R.A. concerned and file placed before for further action."

34. There is also a Form 21 available in the paper book of the appeals which is executed by the official of the State and official of the requiring body that is BDA to the effect that the State made over possession to the BDA and the BDA received possession of the same from the State. Such document is also dated April 2, 2007.

35. The entry dated April 2, 2007 in the ordersheet of the acquisition proceeding, the note on the action taken of the same date, and the Form 21 are in sync with each other. The land stood vested with the State on April 2, 2007.

36. It is the contention of the writ petitioners that, actual physical possession was not taken and that, the writ petitioners are still in possession thereof. It is also their contentions that, since a Panchnama of taking possession witnessed by two independent witnesses was not produced before the Court, no validity should be attached to the Form 21 or the claim of taking and handing over of possession.

37. Indore Development Authority (Supra) considers various authorities including **(2011) 5 SCC 394 (Banda Development Authority, Banda vs. Moti Lal Agarwal and others)** and notes that principles with regard to taking of possession was specified in **Banda Development Authority (supra)**.

38. Essentially, **Banda Development Authority (supra)** is of the view that, no hard and fast rule can be laid down as to what a Court would construe as taking possession of the acquired land. If the acquired land is vacant, the act of the State Authority concerned to go to the spot and prepare a Panchnama will ordinarily be treated as sufficient to constitute taking of possession.

39. **Raghbir Singh Sehrawat (supra)** cited on behalf of the writ petitioners was considered by **Indore Development Authority (supra)** in paragraph 273 thereof. It was observed in **Indore Development Authority (supra)** with regard to **Raghbir Singh Sehrawat (supra)** as follows:-

*"273. In the decision in Raghbir Singh Sehrawat v. State of Haryana, the observation made was that it is not possible to take the possession of entire land in a day on which the award was declared, cannot be accepted as laying down the law correctly and the same is contrary to a large number of precedents. The decision in State of **M.P.** v. Narmada Bachao Andolan, is confined to particular facts of the case. The Commissioner was appointed to find out possession on the spot. **DVDs** and **CDs** were seen to hold that the landowners were in possession. The District Judge, Indore, recorded the statements of the tenure-holder. We do not approve the method of determining the possession by appointment of Commissioner or by **DVDs** and **CDs** as an acceptable mode of*

proving taking of possession. The drawing of panchnama contemporaneously is sufficient and it is not open to a Court Commissioner to determine the factum of possession within the purview of Order 27 Rule 9 CPC. Whether possession has been taken, or not, is not a matter that a court appointed Commissioner cannot opine. However, drawing of panchnama by itself is enough and is a proof of the fact that possession has been taken.”

40. Prahlad Singh (supra) in the facts of that case, held that no material was produced to show that actual and physical possession of the acquired land was taken by the State authorities. It followed **Banda Development Authority (supra)**. Since the acquiring authority could not satisfy the Court that actual possession of the acquired land was taken on a particular date, the writ petition there was allowed. The factual scenario in the present case is different as noted above.

41. In the facts of the present case, possession was taken by State and made over to BDA on April 2, 2007 as will appear from the endorsements made in the file relating to the acquisition proceedings and Form 21 disclosed before the First Court. BDA in turn made over possession to NHAI as appearing from the writing dated April 9, 2021.

42. To return a finding that possession was never taken we need to disbelieve three authorities under Article 12 and their officials, namely the State, BDA and NHAI and that too spanning a period from April 2, 2007 when the initial possession was taken by the State and made over to BDA till April 9, 2021 when BDA made over possession to NHAI.

There is no material on record to subscribe to the view of the writ petitioners regarding possession.

43. Since, possession was taken of the plots concerned, and the nature of taking of possession satisfies the yardstick as stipulated in **Indore Development Authority (supra)**, that is, possession being taken and made over to the requiring body, we are of the view that, the acquisition proceeding initiated under the Act of 1894 cannot be said to lapse so as to attract the provisions of the Act of 2013 or to hold that the properties are no longer within the purview of the acquisition proceeding.

44. Although on the strength of the ratio of **Indore Development Authority (supra)** with regard to possession, the acquisition proceeding cannot be said to lapse, we propose to examine the contentions relating to the award in the facts of the present case.

45. Again, the records produced before us, relating to the acquisition proceeding, demonstrate that, there was an award passed in respect of the acquisition. There is writing dated March 13, 2007 issued by the Joint Secretary to the Collector approving of award in respect of acquisition of 4.50 acres of land covered in the entirety of the acquisition proceeding. Furthermore, the authorities apportioned the award and the amount to be paid as compensation amongst the land losers. There was an estimate prepared. Revised estimate was also prepared. Apportionment was also done. That apart, more importantly, some of the writ petitioners approached the authorities for disbursement of the quantum covered under the award. This was done much prior to such persons approaching the Writ Court.

46. The writ petitioners are silent as to the approach of the some of the writ petitioners for disbursement of the awarded compensation. The

writ petitioners were well aware of the acquisition proceeding under the Act of 1894 and chose not to challenge the same till 2021.

47. This conduct of the some of the writ petitioners in approaching the authorities for disbursement for the award by itself establishes that the writ petitioners or a large section of them, accepted the acquisition proceeding, accepted the award and wanted the compensation receivable by them to be paid to them. At their behest therefore, it would be a travesty of justice, to arrive at a finding that, the acquisition proceeding stood lapsed as there was no valid award in the eye of law. Their conduct of applying for the disbursement of the compensation awarded, presupposes that they accepted not only the validity of the acquisition proceeding but also of the award itself. At the very least, they were imbued with the knowledge of the acquisition proceeding and the award passed therein. Their contention that they became aware only of the notification of NHAI is therefore misplaced.

48. It is the contention of the writ petitioners that, the award was made and published in the name of persons who were the erstwhile owners of the plots concerned and therefore invalid.

49. As noted above, the writ petitioners by their conduct established that they knew about the award and in fact that they accepted the award. Therefore, they should not be allowed to contend that, the award was published in the name of different persons and they were not aware of the same. Moreover, as noted in **Brijendra Prasad Gupta and others (supra)** State is not required to make a roving enquiry as to the ownership of the land sought to be acquired. Proceeding on the basis of the record of rights should not be faulted. This view of **Brijendra Prasad Gupta and others (supra)** was reiterated in **Ahuja Industries Limited (supra)**.

50. It is the contention of the writ petitioners that the record of rights contained the names of the writ petitioners at the relevant point of time and that, the record of rights were manipulated subsequently so as to delete their names and insert the names of BDA.

51. There is no conclusive evidence on record to arrive at a finding that, the record of rights contained the name of the writ petitioners at the relevant point of time. Be that as it may, some of the writ petitioners, as noted above, approached the authority for compensation in terms of the award. Therefore, we are not minded to hold that the record of rights were manipulated in the manner as claimed on behalf of the writ petitioners.

52. May George (supra) considered the issue as to whether non-compliance with the provisions of Section 9(3) of the Act of 1894 would vitiate the award and the subsequent proceedings under the Act. Section 9 of the Act of 1894 provides that a person interested to file a claim petition with documentary evidence for determining the market value of the land. Section 9(3) of the Act of 1894 requiring the Collector to serve notice on the occupier of such land and on all such persons known or believed to be interested in or to be entitled to act for persons so interested. **May George (supra)** considered the provisions of Section 9(3) and is of the view that the same is not mandatory and non-compliance thereof will not vitiate the acquisition proceeding.

53. In conspectus of the facts and circumstances of the present case, the acquisition proceedings, therefore, cannot be said to be vitiated in absence of any notice of the acquisition proceedings being given to the writ petitioners. The writ petitioners were with requisite notice of the acquisition proceeding as some of them approached the authorities for compensation in terms of the award published therein.

54. The order-sheet of the acquisition proceedings produced before us records an order dated March 22, 2007 where it is said that, some of the writ petitioners refused to accept the notices issued under Section 9 of the Act of 1894.

55. Dr. G. H. Grant (supra) is of the view that claim for compensation can be agitated either before the Collector under Section 30 or by way of a separate suit. Therefore, the writ petitioners are not remediless with regard to the non-receipt of compensation by them in respect of the acquisition proceedings.

56. Ramniklal N. Bhutta (supra) is of the view that, power under Article 226 of the Constitution of India is discretionary. It is to be exercised only in furtherance of interest of justice and not merely on the making out of a legal point. It notes that, land acquisition proceedings are largely in public interest. Therefore, Courts are required to weigh the public interest vi-a-vis the private interest while exercising the power under Article 226 of the Constitution of India. It observes that, there are many ways of affording appropriate relief and redressing a wrong in respect of acquisition proceedings and quashing the acquisition proceedings is not the only mode of redress.

57. In the facts of the present case, the first Court found that, no award was made and that, possession was not taken and, therefore, proceeded to quash the acquisition proceedings. The First Court lost sight of the fact that, a large number of plots are involved in the entire acquisition proceedings initiated in 2004. Therefore, quashing the entirety of the acquisition proceedings was of wide ramifications. In any event, in our view, there was no legal ground to arrive at a finding that, the acquisition proceedings was vitiated warranting its quashing. At best, the writ petitioners were entitled to compensation in

accordance with the ratio laid down in **Indore Development Authority (supra)**.

58. As noted above, the prayers in the writ petition relates to firstly consideration of representation in the light of the provisions of 2013 Act. The second prayer is in relation to payment of compensation. The third prayer relates to derequisition of the plots concerned. As discussed above, the writ petitioners are not entitled to derequisition as right, title and interest stood vested with the State in the acquisition proceeding. They are at liberty to approach the authorities for compensation in terms of the ratio laid down in **Indore Development Authority (supra)**. If they make such approach, the authority will dispose of the same after affording the writ petitioners an opportunity of hearing within four weeks from the date of conclusion of such hearing.

59. The subsequent initiation of acquisition under the National Highways Act, 1956 is cited for the proposition that, such conduct establishes that the authorities accepted with the acquisition of 2004 was not completed.

60. We find from the records that, NHAI issued a notification under Section 3C of the Act of 1956 did not proceed to include the plots involved in the subsequent notification under Section 3D of the Act of 1956. NHAI, therefore, corrected themselves with regard to the plots concerned. Land once vested with State cannot be derequisitioned nor any further acquisition proceedings lie. In the present case, land stood vested under the Act of 1894 and as such revocation of the Act of 1956 was non est. No right flows from the revocation of the Act of 1956.

61. A. Ramachandra Reddy & Ors. (supra) decided the quantum of compensation on the basis of the subsequent notification issued under

the Act of 1894 and not on the basis of the first notification. The facts and circumstances of the present case are different for the ratio therein to be applied.

62. In view of the discussions above, the impugned judgment and order dated September 30, 2022 passed by the First Court in the seven writ petitions is set aside.

63. FMA 168 of 2023, MAT 173 of 2023, MAT 174 of 2023, MAT 175 of 2023, MAT 176 of 2023, MAT 177 of 2023, MAT 178 of 2023, MAT 1272 of 2023, MAT 1333 of 2023, MAT 1334 of 2023, MAT 1353 of 2023, MAT 1354 of 2023, MAT 1355 of 2023 and MAT 1274 of 2023 along with all connected applications are disposed of accordingly without any order as to costs.

(Debangsu Basak,J.)

64. I Agree.

(Md. Shabbar Rashidi, J.)